No. 896

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Plaintiff in Error,

vs.

THE HONOLULU PLANTATION COMPANY (a Corporation),
Defendant in Error.

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(Pages 603 to 875, Inclusive.)

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Upon Writ of Error to the United States District Court, for the District of Hawaii.

THE FILMER BROS. CO. PRINT, 424 SANSOME ST., S.

verdict, and thereafter came into court and rendered and returned the following verdict, to wit:

"United States of America,
District of Hawaii. }

In the District Court of the United States, in and for the District of Hawaii.

THE UNITED STATES OF AMERICA,
Plaintiff and Petitioner,
vs.
THE HONOLULU PLANTATION COMPANY (a Corporation) et al.,
Defendant and Respondent.

Verdict.

We, the jury in the above-entitled action, upon the issues framed in said action between the above-named plaintiff and petitioner, and the Honolulu Plantation Company, a corporation, defendant and respondent above named, find the following verdict, to wit:

1. We find that the above-named plaintiff and petitioner is entitled to have all the right, title, interest and estate of said The Honolulu Plantation Company, a corporation, said defendant and respondent, in and to the tract and parcel of land involved herein, and hereinafter more particularly described, condemned for the use and purposes set out in the petition on file herein, and to take, hold and acquire said tract and parcel of land and its appurtenances in fee simple absolute, for the public uses and purposes in said petition set out.

2. We find the value of all improvements on the property condemned in the above-entitled action to be eight thousand five hundred and twenty-three dollars.

3. We find the value of the property condemned in the above-entitled action, to wit, the leasehold interest of said defendant, said the Honolulu Plantation Company, a corporation, in and to the tract and parcel of land condemned herein, and hereinafter more particularly described, to be ninety-four thousand dollars, in United States gold coin.

4. As to that part of the property condemned herein which constitutes only a portion of a larger tract, we find and assess the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the above-named plaintiff and petitioner, to be nothing.

5. As to that part of the property condemned herein which constitutes only a portion of a larger tract, we find and assess the benefits to the portion not sought to be condemned by the construction of the improvements proposed by said plaintiff and petitioner, to be nothing.

The tract and parcel of land hereinabove in this verdict referred to is situated as follows, to wit:

In the District of Ewa, in and about the harbor of Pearl Lochs, sometimes called Pearl Harbor, in the Island of Oahu, in the Territory and District of Hawaii, in the United States of America, and is bounded and particularly described as follows, to wit:

Beginning at a point on the mauka or east side of the

right of way of the Oahu Land and Railway Company's Railroad, east, magnetic, from the corner of that certain fish pond dam situate near the north end of Kuahua Island.

1. Thence east magnetic 780 feet to a point.

2. Thence south 22 30′ E. magnetic 2804 feet to a point.

3. Thence south 47 31½′ W. magnetic 3333 feet to a point.

4. Thence south 69 04′ W. magnetic 6370 feet to a point.

5. Thence north 43 42 1-3′ W. magnetic 2686.6 feet to a point on the shore line.

Thence following the shore line to the eastward and southward to the point where the railroad first meets the shore line, Ewa, or west, of Puuloa station; thence following the mauka or east side of said right of way of said railroad with all its tangents and curves to the point of beginning (saving and excepting the right of way of said railway situate and lying between where course 3 above noted crosses said right of way about 700 feet northward of course 3, which section of right of way is not included in this tract), containing 561.2 acres, more or less.

Dated Honolulu, Hawaii, March 11, 1902.

A. BARNES,

Foreman of said Jury."

And to said verdict said plaintiff and petitioner, through its said counsel then and there present, then and there duly excepted upon the following grounds, to wit:

1. That said verdict is excessive, in this, that it at-

tempts to award excessive, unreasonable and inconsistent compensation.

2. That said verdict is contrary to and against the law and the evidence herein.

3. That said verdict is not sustained or justified by either the law or the evidence herein, or the weight of the evidence herein, and that said evidence is insufficient to justify said verdict.

4. That said verdict is contrary to and against the charge of the Court herein. (Exception No. 47.)

And said plaintiff and petitioner now assigns said verdict, and its reception herein as error.

And said plaintiff and petitioner, through its said counsel, then and there gave notice of motion for a new trial.

And to said verdict, said defendant, said Honolulu Plantation Company, through its said counsel, then and there duly excepted as contrary to the law and the evidence, and the weight of the evidence, and gave notice of motion for a new trial.

And thereafter, and within due time, to wit, on March 20th, 1902, said plaintiff and petitioner, through its said counsel, prepared, served and filed its motion for a new trial of the above-entitled action as to the issues therein joined in between it and said Honolulu Plantation Company, said defendant; and then and there, to wit, on said March 20th, 1902, prepared, served and filed its notice of the time and place of presentation and hearingof said motion of said plaintiff and petitioner for said new trial; and said plaintiff and petitioner, through its said counsel, did, on said March 20th, 1902, duly serve upon said Honolulu Plantation Company, said defendant, each of

the above-mentioned papers, to wit, said motion of said plaintiff and petitioner for a new trial, and also said notice of the time and place of presentation and hearing of said motion for a new trial.

Said motion of said plaintiff and petitioner for said new trial is as follows, to wit:

[Title of Court and Cause.]

Motion of Plaintiff and Petitioner for a New Trial Herein.

Now comes the above-named plaintiff and petitioner in the above-entitled action, and moves said Court that the verdict made, given and rendered herein on March 11th, A. D. 1902, by the jury called to try the issues in the above-entitled cause between said plaintiff and petitioner and Honolulu Plantation Company, a corporation, one of the defendants and respondents above named, be annulled, vacated and set aside, and that a new trial be granted herein, upon the following grounds, namely:

1. Insufficiency of the evidence to justify said verdict.

2. That the verdict is contrary to and against the law and the evidence.

3. That the verdict is not sustained or justified by either the law or the evidence or the weight of the evidence herein.

4. That said verdict is excessive in this, that it attempts to award excessive, unreasonable and inconsistent compensation or damages herein.

5. That said verdict is contrary to and against the charge of the Court herein.

6. Errors in law occurring during the trial and excepted to by said plaintiff and petitioner.

And said plaintiff and petitioner now makes and al-

leges and presents in and upon this motion for a new trial, the following assignment and specification of errors, to wit:

ASSIGNMENT OF ERRORS UNDER THE AFORESAID GROUND NO. 1.

(a) Said evidence is wholly insufficient to justify said verdict in this, that there is no evidence to support the finding that the market value of the leasehold interest of said Honolulu Plantation Company in the land involved herein is of the sum of $94,000 00-100, or any other sum in excess of $75,000; and in this behalf plaintiff and petitioner shows in and by the affidavit of J. J. Dunne, Esq., Assistant United States Attorney for said District, hereto attached, made a part hereof, and marked Exhibit "A," and in and by the judgment of said Court in said affidavit set out, that in the above-entitled action, between the same parties, upon the same pleadings, and upon the same evidence, the "full compensation" of said Honolulu Plantation Company herein "for its damages of every kind and character in this case," was formerly, to wit, on January 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000, said "full compensation" including said market value of said leasehold interest.

(b) Said evidence is wholly insufficient to justify said verdict in this, that there is no evidence to support the findings that the market value of all improvements upon the property condemned in the above-entitled action is of the sum of $8,523 or any other sum; and in this behalf plaintiff and petitioner shows in and by the affidavit of J. J. Dunne, Esq., Assistant United States Attor-

ney for said District, hereto attached and made a part hereof, and marked Exhibit "A," and in and by the judgment of said Court in said affidavit set out, that in the above-entitled action, between the same parties, upon the same pleadings, and upon the same evidence, the "full compensation" of said Honolulu Plantation Company herein "for its damages of every kind and character in this case," was formerly, to wit, on January 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000.

(c) The evidence is wholly isufficient to justify said verdict in this, that it wholly fails to show that said Honolulu Plantation Company, is entitled to receive as compensation or damages for the taking and condemnation of their leasehold interest in the land involved in the above-entitled action, any sum whatever in excess of $75,000.

(d) The evidence is wholly insufficient to justify said verdict in this, that it wholly fails to show that said Honolulu Plantation Company is entitled to receive as compensation or damages for the taking and condemnation of improvements upon said land any sum whatever.

(e) Said evidence is wholly insufficient to justify said verdict in this, that it wholly fails to show any value of said leasehold interest in excess of $75,000.

(f) Said evidence is wholly insufficient to justify said verdict in this, that it wholly fails to show either the existence upon the land condemned herein of any improvements, or the market value, if any, of such improvements.

ASSIGNMENT OF ERRORS UNDER THE AFORESAID GROUND NO. 2.

(a) Said verdict is contrary to and against law and the evidence because of errors of law occurring during the trial and excepted to by plaintiff and petitioner, and plaintiff and petitioner hereby makes express reference to the detailed specifications herein included in the assignment of errors under the aforesaid ground No. 6, and makes them and each of them part and parcel of this specification.

(b) Said verdict is contrary to and against the law and the evidence because of the insufficiency of the evidence to justify said verdict; and said plaintiff hereby makes express reference to the detailed specifications herein included in the assignment of errors under the aforesaid ground No. 1, and makes them and each of them part and parcel of this specification.

(c) Said verdict is contrary to and against the law and evidence, because of its finding that the market value of the leasehold interest of said Honolulu Plantation Company in the land herein condemned is the sum of $9,400, or any other sum whatever in excess of $75,000.

(d) Said verdict is contrary to and against the law and the evidence because of its finding that the value of all improvements upon the property condemned in the above-entitled action is of the sum of $8,523, or any other sum whatever.

(e) Said verdict is contrary to and against the law and the evidence, because as shown in and by the affidavit of J. J. Dunne, Esq., Assistant United States Attorney for said District, hereto attached, made a part hereof, and marked Exhibit "A," and in and by the judg-

ment of said Court in said affidavit set out, it appears that, in the above-entitled action, between the same parties, upon the same pleadings, and upon the same evidence, the "full compensation" of said Honolulu Plantation Company herein "for its damages of every kind and character in this case" was formerly, to wit, on January 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000.

ASSIGNMENT OF ERRORS UNDER THE AFORESAID GROUND NO. 3.

(a) Said verdict is not sustained or justified by either the law or the evidence or the weight of the evidence herein, because of errors of law occurring during the trial and excepted to by plaintiff and petitioner; and plaintiff and petitioner hereby makes express reference to the detailed specifications herein included in the assignment of errors under the aforesaid ground No. 6, and makes them and each of them part and parcel of this specification.

(b) Said verdict is not sustained or justified by either the law or the evidence or the weight of the evidence herein, because of the insufficiency of the evidence to justify said verdict; and said plaintiff and petitioner hereby makes express reference to the detail specifications herein included in the assignment of errors under the aforesaid ground No. 1, and makes them and each of them part and parcel of this specification.

(c) Said verdict is not sustained or justified by either the law or the evidence, or the weight of the evidence herein, because of its finding that the market value of the leasehold interest in said Honolulu Plantation Com-

pany in the land herein condemned is of the sum of $94,000, or any other sum whatever in excess of $75,000.

(d) Said verdict is not sustained or justified by either the law or the evidence, or the weight of the evidence herein, because of its finding that the value of all improvements upon the property condemned in the above-entitled action is of the sum of $8,523, or any other sum whatever.

(e) Said verdict is not sustained or justified by either the law or the evidence, or the weight of the evidence herein, because as shown and by the affidavit of J. J. Dunne, Esq., Assistant United States Attorney for said District, hereto attached, and made a part hereof, and marked Exhibit "A," and in and by the judgment of said Court in said affidavit set out, it appears that, in the above-entitled action, between the same parties, upon the same pleadings and upon the same evidence, the "full compensation" of said Honolulu Plantation Company herein for "its damages of every kind and character in this case," was formerly, to wit, on January 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000.

ASSIGNMENT OF ERRORS UNDER THE AFORESAID GROUND NO. 4.

(a) That said verdict is excessive in this, that it attempts to award excessive, unreasonable and inconsistent compensation or damages herein.

(b) The compensation or damages attempted to be awarded by said verdict of said jury is excessive, unreasonable and inconsistent in this, that the amount attempted to be awarded by said verdict as compensa-

tion or damges for the taking of the alleged improvements claimed to have been upon the land sought to be condemned herein, was and is grossly and unreasonably excessive, without the evidence, and with no evidence to support it, it not appearing in the evidence either that any improvements were upon the land sought to be condemned or what, if any, was the market value thereof.

(c) The compensation or damages attempted to be awarded by said verdict of said jury is excessive, unreasonable and inconsistent in this, that the amount attempted to be awarded by said verdict as compensation or damages for the taking of the leasehold interest claimed in the land sought to be condemned by said Honolulu Plantation Company was and is grossly and unreasonably excessive, without the evidence, with no evidence to support it, and against the evidence in the case.

(d) The compensation or damages attempted to be awarded by said verdict of said jury is excessive, unreasonable, and inconsistent in this, that as shown in and by the affidavit of J. J. Dunne, Esq., Assistant United States Attorney for said District, hereto attached, made a part hereof, and marked Exhibit "A," and in and by the judgment of said Court in said affidavit set out, it appears that, in the above-entitled action, between the same parties, upon the same pleadings, and upon the same evidence, the "full compensation" of said Honolulu Plantation Company herein "for its damages of every kind and character in this case," was formerly, to wit, on January 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000.

ASSIGNMENT OF ERRORS UNDER THE AFORE-SAID GROUND NO. 5.

(a) In arriving at said verdict, said jury failed to consider the testimony as a whole, or fairly to weigh all the testimony, both direct and indirect, with all reasonable inferences to be drawn therefrom; but on the contrary, limited its consideration to isolated portions of said testimony.

(b) In arriving at said verdict, said jury failed to consider the fair market value of the property involved at the time of the taking, to wit, on July 6th, 1901, in its then actual condition.

(c) In arriving at said verdict, said jury considered the mere speculative or possible value, and not market value.

(d) In arriving at said verdict, said jury was neither guided nor governed by the preponderance of the evidence.

(e) In arriving at said verdict, said jury was neither guided nor governed by the amount of the just compensation to be awarded to the defendant herein for the taking of its property.

(f) In arriving at said verdict, said jury gave undue and excessive weight to the expert testimony introduced by said defendant.

ASSIGNMENT OF ERRORS UNDER THE AFORE-SAID GROUND NO. 6.

(a) The Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness U. S. G. White, during his cross-examination, to wit:

"Now, do you know whether there is a mill belonging to the plantation a mile above this land?"

Said question was objected to by the plaintiff and petitioner as not proper cross-examination, and upon the ground that it involved some land other than the land in controversy, the witness having testified that there was no mill on the land in controversy on July 6th, 1901, and the witness not having been asked as to any other land. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, pp. 63-4.)

(b) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness U. S. G. White, during his cross-examination, to wit:

"What is the size, Captain, of that mill?"

Said question was objected to by plaintiff and petitioner as immaterial, irrelevant, and not cross-examination, and as involving entirely new matter to which no reference is made on the direct examination, and as seeking in the midst of a cross-examination to prove the case of said Honolulu Plantation Company. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling and now assigns the same as error. (Rep. Tr., p. 65-7.)

(c) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness U. S. G. White, during his cross-examination, to wit:

"How far is this Halawa Valley that you have testified about in your first answer that I asked in regard to it,

from the land in question—the nearest portion to the land in question?"

Said question was objected to by the plaintiff and petitioner upon the ground that it was wholly immaterial, not proper cross-examination, not addressed to any subject matter to which the attention of the witness was called on the examinaton in chief, and upon the additional ground that the witness might as well be asked how far Paris is from this piece of land.

Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling and now assigns the same as error. (Reporter's Transcript, p. 69-70.)

(d) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness J. W. Pratt, during his cross-examination, to wit:

"Now, Mr. Pratt, how was this return made up—what kind of a return is this under the law?"

Said question was objected to by said plaintiff and petitioner upon the ground that it was a double question. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 96.)

(e) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness F. K. Archer during his cross-examination, to wit:

"Now, Mr. Archer, do you know what the land is capable of yielding in sugar?"

Said question was objected to by plaintiff and peti-

tioner upon the ground that it was not proper cross-examination, it appearing that no crop had ever been raised on that land. Said question was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 112.)

(f) Said Court erred in refusing to permit plaintiff and petitioner to state its objections to the following question asked by said Honolulu Plantation Company from said witness F. K. Archer, during his cross-examination, to wit:

"Do you know whether the Honolulu Plantation Company had, on the 6th of July, 1901, a water supply that was immediately available to this land in question?"

And in this behalf, plaintiff and petitioner shows that the following occurred:

"Mr. SILLIMAN.—Do you know whether the Honolulu Plantation Company had, on the 6th of July, 1901, a water supply that was immediately available to this land in question?"

Mr. DUNNE.—I object to that question on the ground—

The COURT.—Ask the question.

Mr. DUNNE.—We except."

And in this behalf plaintiff and petitioner shows that said question was immaterial, irrelevant and incompetent, called for the conclusion of the witness, was not proper cross-examination, did not exhibit the actual condition of the land in question on July 6th, 1901, and involved an inquiry into the condition of land other than the land involved in this cause.

To said ruling of said Court, plaintiff and petitioner

then and there duly excepted, and now assigns the same as error. (Reporter's Transcript, p. 119.)

(g) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness F. K. Archer, during his cross-examination, to wit:

"What was the extent of that water supply?'

Said question was objected to by plaintiff and petitioner upon the ground that it was immaterial, that it did not exhibit the actual condition of the land in question on July 6th, 1901, that it was going outside of the land in controversy, and involved an inquiry into the condition of land other than the land involved in this cause. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's transcript, p. 119-20.)

(h) Said Court erred in refusing to grant the motion of plaintiff and petitioner to strike out the testimony of the witness F. K. Archer relative to the alleged water supply. Said motion was made upon the ground that this alleged water supply appeared from the testimony of said witness not to be upon the land in controversy, and that the evidence of the witness was merely an attempt to get before the jury evidence of the value of the land in controversy by some development or improvement upon some other land. Said motion was denied by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Tr., p. 120.)

(i) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked

by said Honolulu Plantation Company from said witness F. K. Archer during his cross-examination; to wit:

"Do you know whether there is a flowing stream immediately available for use upon this land within the line of the Honolulu Plantation Company?"

Said question was objected to by plaintiff and petitioner upon the ground that it was an attempt to fix the value of this property in controversy by other things elsewhere. Said objection was overruled by the Court; and plaintiff and petitioner then and there duly excepted to said ruling and now assigns the same as error. (Reporter's Transcript; p. 131.)

(j) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness F. K. Archer, during his cross-examination, to wit:

"Well, now, assuming that the land is in the same condition or substantially the same condition on the 6th of July, 1901, and considering its situation, and the uses it might be put to, and the improvements put upon it, the plowing that has been done, the clearing that has been done, and all of its usefulness, the whole property of the Honolulu Plantation Company that is available for use, in connection with that land, assuming those things, what would you say as to the value of the leasehold interest?"

Said question was objected to by plaintiff and petitioner upon the ground that it was incompetent, that it was an incompetent, hypothetical question, and that it involved matters not established by any evidence in this case.

Said objection was overruled by the Court; and plaintiff and petitioner then and there duly excepted to said

ruling; and now assigns the same as error. (Reporter's Transcript; p. 122.)

(k) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness F. W. Thrum, during his direct examination, to wit:

"Now, Mr. Thrum, how do you know what this land will produce, or whether it is good cane land or not?"

Said question was objected to by plaintiff and petitioner as immaterial, purely speculative and double-headed. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 148.)

(l) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness F. W. Thrum, during his direct examination, to wit:

"Do you know the yield of the Halawa Valley?"

Said question was objected to by plaintiff and petitioner upon the ground that the yield of the Halawa Valley was wholly immaterial it not appearing that the land in controversy ever had any yield. Said objection was overruled by the Court; and plaintiff and petitioner then and there duly excepted to said ruling; and now assigns the same as errror. (Reporter's Tr. p. 150.)

(m) Said Court erred in sustaining the objection of said Honolulu Plantation Company \to the following question asked by said plaintiff and petitioner from said witness F. W. Thrum during his direct examination; to wit:

"If that land, that particular strip of land, is a leasehold, leasehold interest of 40 years, say, on that particular piece of land seven years of which was fully paid up the balance of which was held at three and one-half per cent of thesugar produced; provided it did not fall below $4,000 per annum for the entire tract of land, including other land, the first lease including 2,900 acres, and the second lease 2,122 acres, if such a leasehold were offered for sale in the public market, what would you be willing to pay per acre for it?"

Said objection was made upon the ground that the question was irrelevant and that the witness was unqualified to express an opinion; said Court sustained said objection on the ground that said witness was not an expert; and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error, (Reporter's Transcript, p. 154.)

(n) Said Court erred in granting the motion made by said Honolulu Plantation Company to strike out from the testimony of said witness F. W. Thrum, the following testimony given by said witness upon being recalled to wit:

"Mr. DUNNE.—One question, Mr. Thrum, you stated that part of your ocupation on the Ewa Plantation, for instance, was the selection of cane land?

"The WITNESS.—Well, the first case was in 1895, when Mr. Lowrie was the manager, and many acres were valuable for the cultivation of cane below field 19—that was when the extent of the plantation in that direction. I was sent out there, and started at field 19; and I cut lines through the algeroba, the glue and the lantana, and was to report the land that I considered valuable

for sugar cane; and after about two or three weeks later, I had got around this tract, field 19, and reported to him the number of acres that I considered valuable for sugar cane in that vicinity. My report was accepted."

Said motion to strike out was made upon the ground that this testimony was not proper redirect examination; said Court granted said motion upon the ground that said testimony was not material; and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 1557.)

(o) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by the said Honolulu Plantation Company from the witness J. A. McCandless, during his cross-examination, to wit:

"What is the value set on that leasehold interest of 142 acres (referring to a certain tract of 142 acres on Ford Island, originally sought to be condemned in this action, but as to which a discontinuance of the action was subsequently made and filed by plaintiff and petitioner and ordered by the Court)?"

Said question was objected to by the plaintiff and petitioner upon the ground that the records of this Court show that this entire matter was settled amicably between the Oahu Sugar Company and the Government; that this was not proper cross-examination; that it is directed to any matter testified to by the witness in chief; and that it has no materiallity. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling and now assigns the same as error. (Reporter's Transcript. p. 180-182,)

(p) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness J. A. Low, during his direct examination, to wit:

"Just explain the nature of your duties, and the nature of your experience, and the nature of your study on the subject (of the growth and manufacture of sugar.)"

Said question was objected to by plaintiff and petitioner upon the ground that it involves three separate and distinct questions. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 188.)

(q) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness J. A. Low, during his direct examination, to wit:

"Why not (that is to say, why was not the sugar grown on this land by the Honolulu Plantation Company)?"

Said question was objected to by plaintiff and petitioner upon the ground that the reason why sugar was not grown upon that land by the Honolulu Plantation Company was wholly immaterial, because it is the fact that should be dealt with, and not the reason which may be had for that fact. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 192.)

(r) Said Court erred in denying the motion of plaintiff and petitioner to strike out the following testimony elicited by said Honolulu Plantation Company from the witness C. Bolte, during his direct examination, to wit:

"Q. Now, considering the property sought to be condemned in the state in which you saw it on the day that you viewed it, that it is in substantially the same state on the 6th of July, 1901, considering its situation and the uses that might be made of it, and to which it was adapted, and assuming that the plantation has a thirty-nine years' lease, seven years' rental of which has been paid, and the remaining thirty-two years is upon the basis of a crop payment—that is, three and a half per cent of the sugar produced, and the payment of the taxes, the lease including other land, the minimum rent upon the other land which is not material, and assuming there are 342 acres of cane land in the area sought to be condemned,what in your opinion was the value of the leasehold interest of that land on the 6th of July, 1901, to the Honolulu Plantation Company?

"A. Four hundred and fifty thousand dollars."

Said motion to strike out was made upon the ground that what this might be worth to the Honolulu Plantation Company is not a fair test of the market value. Said motion was denied by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 210-211.)

(s) Said Court erred in denying the motion of plaintiff and petitioner to strike out the following testimony elicited by said Honolulu Plantation Company from the witness J. A. Low during his direct examination, when resumed, to wit:

"Q. What is the value of the use of the buildings upon that land for the remainder of your term of the lease?

"A. Thirteen thousand five hundred dollars. I believe the buildings are worth that to this company, because I do not believe that there would be a vestige of the buildings left at the termination of the lease forty years from now."

Said motion to strike out was made upon the ground that this testimony made no attempt to reach the market value, and upon the ground that the value which the use of the buildings might have to any particular individual as distinguished from the market value was illegitimate. Said motion was denied by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 223.)

(t) Said Court in denying the motion of plaintiff and petitioner to strike out the following testimony elicited by said Honolulu Plantation Company from the witness J. A. Low, during his direct examination when resumed, to wit:

"We have similar soil in the Halawa valley that we have raised cane on."

Said motion to strike out was made upon the ground that this was a comparison without side soil, and that the question asked limited the witness to the soil on the land sought to be condemned.

Said motion was denied by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 174-5.)

(u) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness

J. A. Low, during his direct examination, when resumed, to wit:

"Q. What was its (the property sought to be condemned) value on the 6th of July, 1901?

A. To the Honolulu Plantation Company?

Q. Yes, sir."

Said question was objected to by plaintiff and petitioner upon two grounds: First, on the ground that it does not seek to bring forth market value; and second, upon the ground that it seeks to limit the value therein spoken of to an individual, to wit, the Honolulu Plantation Company, as distinguished from market value.

Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 179.)

(v) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness J. A. Low, during his direct examination, when resumed, to wit:

"Mr. Low, that portion of the tax return read in evidence here, showing the statement under the heading "Leasehold interest return of real state leases as per schedule 'B,' $50,000—what have you to say in regard to it, Mr. Low, by way of explanation?"

Said question was objected to by plaintiff and petitioner upon the ground that it was ambiguous, and upon the ground that it would permit almost any sort of answer, hearsay, or otherwise. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 230-231.)

(w) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness W. R. Castle, during his direct examination, to wit:

"Q. What knowledge have you of the development of the plantations in that district (meaning the District of Ewa)?"

Said question was objected to by plaintiff and petitioner upon the ground that the development of other plantations in that district was entirely irrelevant and immaterial to any issue in this case, said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Tr., p. 257-8.)

(x) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness W. R. Castle, during his direct examination, to wit:

"Now, Mr. Castle, considering the property sought to be condemned, the state which you saw it in on the day that you viewed it, and assuming that it was in substantially the same state on July 6th, 1901, and taking into consideration the situation of the land and all the uses that might be made of it, and assuming that the plantation had a thirty-nine years' lease, and that seven years' rental has been paid, and that the rental for thirty-two years is on the basis of three and one-half per cent of the sugar produced, and the payment of taxes, the lease covering other lands in addition to this, and for a minimum rental and assuming that 342 acres of cane land of the land sought to be condemned—what,

in your opinion, was the market value of that leasehold on the 6th of July last?"

Said question was objected to by plaintiff and petitioner as immaterial, irrelevant and incompetent, not justified by the evidence, and without foundation in this, that there is no evidence here that this witness does know what was the market value of such a leasehold as is described in the question, on July 6th, 1901. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Tr., p. 260-1.)

(y) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness W. W. Goodale during his direct examination, to wit:

"Now, Mr. Goodale, considering this land sought to be condemned, in the state in which you saw it on the day that you viewed it, and assume that it is in substantially the same state or was on the 6th of July last year, and considering the situation of it and the uses that might be made of the land and to which it was adapted, and assuming that the plantation had a thirty-nine years' lease, seven years' rental of which had been paid, the rental for thirty-two years is based upon three and one-half per cent of the sugar produced, the particular lease covers other land as well as this, has a minimum basis of rental and includes other lands, and assume that there is three hundred and forty-two acres of cane land, what, in your opinion, is the market value of the leasehold to the Honolulu Plantation Company of the land sought to be condemned on the 6th of July last?"

Said question was objected to by plaintiff and petitioner as immaterial, irrelevant and incompetent, and without foundation, in this, that it is not a fair statement of the evidence, and without foundation, in this, that it does not appear that the witness does know the market value of such property on the 6th of July, 1901. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Tr., p. 271-2.)

(z) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness G. F. Renton, during his direct examination, to wit:

"Now, considering this property sought to be condemned in the state that you saw it, on that day that you viewed it, and assuming that it is in substantially the same situation on the 6th of July, 1901, and assuming that that there is a lease for thirty-nine years, seven years of which has been paid up and the rental for thirty-two years is on the basis of three and one-half per cent of the sugar produced, the lease covers other land as well as this, has a minimum rental which, however, has no materiality to the question—the payment of taxes, and considering all the uses and purposes to be made of the land and the situation in which it exists on that day, and assuming, further, that there was three hundred and forty-two acres of cane land within the area sought to be condemned, what in your opinion was the market value of the leasehold interest of the Honolulu Plantation Company on the 6th day of July last year?"

Said question was objected to by the plaintiff and peti-

tioner as immaterial, irrelevant and incompetent, and not an accurate and faithful statement of the evidence, and without foundation in this, that it does not appear that the witness knows what the market value of said leasehold interest was at the time mentioned. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling and now assigns the same as error. (Reporter's Transcript, p. 284-5.)

(aa) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness F. Meyer, during his direct examination, to wit:

"Well, considering the property sought to be condemned as to its location and all the uses that could be made of it, and assuming that it is substantially in the same situation as it was on the 6th day of July, 1901, and assuming that there is a lease of thirty-nine years, seven years of which are paid up, and thirty-two years of which are on the basis of three and one-half per cent of the sugar produced together with the payment of taxes, and also saying that there is a minimum rental.

The COURT.—There should be an addition, that this three and one-half per cent should not be less than four thousand dollars per year.

Mr. SILLIMAN (Continuing.)—And assuming, also, that there are 342 acres of cane land in the area sought to be condemned, what, in your opinion, was the market value of the leasehold interest on the 6th of July, 1901?"

Said question was objected to by plaintiff and petitioner as incompetent, irrelevant and immaterial, as not a fair and accurate statement, as not a competent, hypo-

thetical question, and as without foundation, in this, that it does not appear that the witness knows the market value on the 6th of July, 1901. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 292-3.)

(bb) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness A. Ahrens, during his direct examination, to wit:

"Now, considering the property sought to be condemned and in the same space in which you saw it on the day that you viewed, that is in October, and assuming that it was in substantially the same situation that it was on July 6th, 1901, and after taking into consideration the use that might be made, the purpose to which it is adapted, and assuming that there is a thirty-nine years' lease, seven years of which are paid up, and the balance of the term is upon the basis of a three and one-half per cent of the stock, and I will also state for your information that there is a minimum basis in which includes other land, now, also assuming that there was 342 acres of cane land included within the 561 acres, what, in your opinion, was the market value of the leasehold interest on the 6th of July last?"

Said question was objected to by plaintiff and petitioner as irrelevant and incompetent, and not a proper and accurate statement of the testimony, and as without foundation, in this, that it does not appear that the witness knows what the market value of such a leasehold was on July 6th, 1901. Said objection was overruled by the Court, and plaintiff and petitioner then and there

duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 300.)

(cc) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by the Honolulu Plantation Company from the witness J. T. Crawley, on direct examination, to wit:

"Mr. SILLIMAN.—What do you know about it?

"The WITNESS.—About the productive capacity of this soil?

"The COURT.—Of this land?"

Said question was objected to by plaintiff and petitioner upon the ground that it was immaterial, irrelevant and incompetent, and called for mere speculation, and that there was no foundation upon which any reasonable person could base an opinion. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 305-6.)

(dd) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by the Honolulu Plantation Company from the witness J. F. Morgan, during his direct examination, to wit:

"Now, Mr. Morgan, taking into consideration the property sought to be condemned and its location and situation, and what can be done with the situation as you saw it on the day that you viewed it, the uses and purposes that the land can be put to, and assuming that the Honolulu Plantation Company has a thirty-nine years' lease, seven years of which were paid up, and the balance of the term is based upon three and one-half per cent of the sugar produced from the land, the lease also covering other land, having a rental basis, and assum-

ing that there was 342 acres of cane land upon the land sought to be condemned, what would you say was the market value of the leasehold interest on the 6th of July, 1901?"

Said question was objected to by plaintiff and petitioner as irrelevant and incompetent, and not a proper or accurate statement of the evidence, and as without foundation, in this that it does not appear that the witness does know what the going market value was on July 6th, 1901.

Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 312-13.)

(ee) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness J. F. Morgan, during his redirect examination, to wit:

"How many mills are there in the vicinity of this land?"

Said question was objected to by plaintiff and petitioner as irrelevant, immaterial and incompetent and not proper redirect examination. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 316.)

(ff) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness L. A. Thurston, during his direct examination, to wit:

"Now, considering the property sought to be condemned, Mr. Thurston, was in the same state in which you saw it on the day on which you visited it last, and

assuming that it was in substantially the same state and condition on the 6th of July, 1901. And taking into consideration the location of the land and of the uses to which it might be put, and to which it was adapted, and assuming the plantation has thirty-nine years' lease, seven years' rental of which is paid up, and the rental for thirty-two years thereof is on a basis of three and one-half per cent of the sugar produced, and the payment of taxes (I will say that the leasehold covers other land and has a minimum rental of $4,000, covering practically 2,000 acres, and assuming that there was 342 acres of cane land in the area sought to be condemned, what is your opinion of the market value of that leasehold interest on the 6th of July, 1901?"

Said question was objected to by plaintiff and petitioner as irrelevant and incompetent, and as not a faithful and accurate statement of the evidence and without foundation, in this, that it does not appear that the witness knows what the market value of this leasehold was on the 6th of July, 1901. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same as error. (Reporter's Transcript, p. 319-20.)

(gg) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness L. A. Thurston, during his redirect examination, to wit:

"What can you say as to the quality of the soil on the land sought to be condemned as to its producing any crop of sugar?"

Said question was objected to by plaintiff and petitioner as immaterial, irrelevant and incompetent, and not proper redirect examination. Said objection was

overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling, and now assigns the same is error. (Reporter's Transcript, p. 323.)

(hh) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness J. R. Higby, during his direct examination, to wit:

"Are you able to state the use of those buildings for the term of thirty-nine years?"

Said question was objected to by plaintiff and petitioner as irrelevant and incompetent, and upon the further ground that it does not call for market value, but calls for merely an individual or personal value. Said objection was overruled by the Court, and plaintiff and petitioner then and there duly excepted to said ruling and now assigns the same as error. (Reporter's Transcript, p. 325.)

(ii) Said Court erred in its charge to the jury upon the subject of expert and opinion evidence, in charging and instructing said jury that "great weight should always be given to the opinion honestly expressed and fairly given of those persons familiar with the subject."

(jj) Said Court erred in refusing to give the jury the first instruction requested by plaintiff and petitioner.

(kk) Said Court erred in refusing to give to the jury the second instruction requested by the plaintiff and petitioner.

(ll) Said Court erred in refusing to give to the jury the fourth instruction requested by the said plaintiff and petitioner.

(mm) Said Court erred in refusing to give to the jury the fifth instruction requested by said plaintiff and petitioner.

(nn) Said Court erred in refusing to give to the jury the sixth instruction requested by said plaintiff and petitioner.

(oo) Said Court erred in refusing to give to the jury the seventh instruction requested by said plaintiff and petitioner.

(pp) Said Court erred in refusing to give to the jury the eighth instruction requested by said plaintiff and petitioner.

(qq) Said Court erred in refusing to give the jury the ninth instruction requested by said plaintiff and petitioner.

(rr) Said Court erred in permitting and receiving the verdict rendered by the jury herein.

(ss) Said Court erred in authorizing, ordering and permitting a trial by jury herein.

(tt) Said jury having returned its verdict herein, on March 11th, 1902, plaintiff and petitioner then and there duly excepted to said verdict upon the following grounds: 1. That said verdict is excessive, in this, that it attempts to award excessive, unreasonable and inconsistent compensation; 2. That said verdict is contrary to and against the law and the evidence herein; 3. That said verdict is not sustained or justified by either the law or the evidence herein, or the weight of the evidence herein, and that said evidence is insufficient to justify said verdict; and 4. That said verdict is contrary to and against the charge of the Court herein; and said plaintiff and petitioner then and there gave due notice of its intention to move for a new trial herein; and said exceptions to said verdict are now relied upon by said plaintiff and petitioner as ground for new trial, and plaintiff and petitioner now assigns the same as error.

And in further support of this motion for a new trial, said plaintiff and petitioner relies upon any error apparent from the pleadings, reporter's transcript of testimony, and all other papers and documents on file in said cause and court, not covered by the grounds of exception hereinabove set forth.

Plaintiff and petitioner makes a part of this motion the Reporter's Transcript of the testimony and his record of all proceedings had upon the trial of said cause. as well as all exhibits, papers, pleadings and documents in said cause, including the request of plaintiff and petitioner for instructions to said jury, and any other paper now on file in said cause and court, or forming any part of the record or papers in said cause, and in particular, plaintiff and petitioner makes the entire Reporter's Transcript of the testimony and the rulings of the Court herein, a part of this motion for a new trial, and of the specific grounds hereinabove set forth.

Dated, Honolulu, Hawaii, March 20th, 1902.

ROBERT W. BRECKONS,

United States Attorney for said District,

J. J. DUNNE,

Assistant United States Attorney for said District, Counsel for Plaintiff and Petitioner.

Exhibit "A."

[Title of Court and Cause.]

AFFIDAVIT OF J. J. DUNNE, ESQ.

United States of America, }
Territory of Hawaii. } ss.

J. J. Dunne, being first duly sworn, deposes and says: I am, and during all the times herein mentioned have been Assistant United States Attorney in and for said District, and in charge of the above-entitled litigation. I am familiar with said litigation from its commencement to the present time. Among said defendants and respondents who appeared and made answer in said litigation, is the Honolulu Plantation Company, a corporation. After issue joined between said plaintiff and petitioner and said Honolulu Plantation Company, the trial of the issue between said parties was set down by said Court for Monday, December 23d, 1901, and on said last-mentioned date, said trial commenced. Said trial was had between the same parties, and upon the same pleadings as in the second trial hereinafter referred to as commencing on March 3d, 1902. Said trial proceeded until Friday, January 10th, 1902, when the testimony was closed, and the cause argued to the jury. Thereafter, on January 11th, 1902, the jury was charged and retired to deliberate upon its verdict. Thereafter, on Monday, January 13th, 1902, the verdict of said jury in said cause was received and read in open court. Said verdict was in writing and is now part of the files in said cause and court, and is hereby expressly referred to and made a part of this affidavit. Said verdict found the value of

all improvements upon the condemned property to be $15,208, and the value of the leasehold interest in the condemned property to be $89,792; making a total of $105,000. Counsel on each side then and there duly excepted to said verdict as being contrary to the law and the evidence and the weight of the evidence, and gave notice of motion for a new trial. Thereafter, within due time, to wit, on January 15th, 1902, said plaintiff and petitioner prepared, served and filed its notice of motion for a new trial, and its motion for a new trial; and thereafter, on January 18th, 1902, said motion for a new trial came on regularly in said court for hearing and disposition, and was submitted to said Court for decision without oral argument, but on briefs. Thereafter, in said cause, on January 25th, 1902, said Court made, gave and rendered its written decisions upon said motion for a new trial hereinabove mentioned, and said written decision is hereto attached, made a part of this affidavit, and marked Exhibit No. 1. Thereafter on January 27th, 1902, said Honolulu Plantation Company, in open court, declined to remit from said verdict the sum of $30,000 as suggested in said written decision of said Court hereinabove mentioned, and thereupon said Court ordered that the new trial of said cause be set for March 3d, 1902, in said court. Thereafter on Monday, March 3d, 1902, as hereinabove stated, the second trial commenced of the issue joined herein between said plaintiff and petitioner and said Honolulu Plantation Company; and said second trial proceeded until March 11th, 1902, when it was argued by counsel and the charge of the Court given to the jury; and on said March 11th, 1902, said jury made, gave and rendered its verdict, which said verdict is in

writing, and is now part of the files in said cause and court, and is hereby expressly referred to and made a part of this affidavit. Said verdict found the value of all improvements upon the property condemned in this action to be $8,523, and found the value of the leasehold interest in the condemned property to be $94,000, making a total of $102,523. To said verdict so rendered on said second trial of said action, plaintiff and petitioner duly excepted upon the following grounds, to wit:

1. That said verdict is excessive in this, that it attempts to award excessive, unreasonable and inconsistent compensation; 2. That said verdict is contrary to and against the law and the evidence herein; 3. That said verdict is not sustained or justified by either the law or the evidence herein, or the weight of the evidence herein, and that said evidence is insufficient to justify said verdict; 4. That said verdict is contrary to and against the charge of the Court herein; and plaintiff and petitoner then and there gave notice of motion for a new trial. And said verdict was excepted to by said Honolulu Plantation Company also, as contrary to the law and the evidence and the weight of the evidence; and said Honolulu Plantation Company also gave notice of motion for a new trial.

I further show that in this second trial the parties were the same as in the first trial; and that in the second trial the pleadings were the same as in the first trial; and in this behalf I refer to and make a part hereof, the pleadings now on file in said cause. I further show that on the first trial of this cause, six witnesses were called on behalf of plaintiff and petitioner in its case in chief, two of whom (J. W. Pratt and J. A. Low) were called

to identify sundry documentary evidence, and two of whom (U. S. G. White and C. F. Pond) were called to describe the characteristics of the land sought to be condemned, and two of whom (F. K. Archer and A. K. Herbert) were called to place valuations upon the leasehold interest of said Honolulu Plantation Company sought to be condemned in said action. I further show that on the second trial of this cause, seven witnesses were called on behalf of plaintiff and petitioner in its case in chief, two of whom (F. J. Church and J. W. Pratt) were called to identify sundry and documentary evidence, and two of whom (U. S. G. White and F. W. Thrum) were called to describe the characteristics of the land sought to be condemned, and three of whom (F. K. Archer, L. L. McCandless and J. A. McCandless) were called to place valuations upon the leasehold interest of said Honolulu Plantation Company sought to be condemned in said action.

I further show that on the first trial of this cause, eleven witnesses were called on behalf of said Honolulu Plantation Company, upon its case, three of whom (G. J. Wagner, J. T. Crawley and Wong Koon Chan) were called to describe the characteristics of the land sought to be condemned, and eight of whom (J. A. Low, W. W. Goodale, A. Ahrens, G. Renton, F. Meyer, C. Bolte, W. R. Castle and L. A. Thurston) were called to place valuations upon the leasehold interest of said Honolulu Plantation Company sought to be condemnd in said action. I further show that on the second trial of this cause, fourteen witnesses were called on behalf of said Honolulu Plantation Company upon its case, three of whom (W. E. Sauer, J. T. Crawley and E. Ward) were called to de-

scribe the characteristics of the land sought to be condemned, and nine of whom (J. A. Low, C. Bolte, W. R. Castle, W. W. Goodale, G. Renton, F. Meyer, A. Ahrens, J. F. Margan and L. A. Thurston) were called to place valuations upon the leasehold interest of said Honolulu Plantation Company sought to be condemned in said action and two of whom (J. R. Higby and William Wagner) were called to describe the characteristics and value of the user of the buildings upon the land sought to be condemned. I further show that upon the first trial of this cause, no witnesses were recalled in rebuttal by either side, and that upon the second trial of this cause two witnesses (B. D. Pender and G. A. Howard) were called on behalf of plaintiff and petitioner in rebuttal, to describe the characteristics and value of the user of the buildings upon the land sought to be condemned, and that one witness, J. A. Low, was recalled upon this last-mentioned subject by said Honolulu Plantation Company. I further show that the evidence received upon each of said trials was substantially the same—the great mass of it was the same on both trials. And such minor differences as may have existed between the cases made by the respective parties upon said trials are hereinabove set forth, and in this behalf I show that in the above-entitled action between the same parties, upon the same pleadings, and upon the same evidence, the "full compensation" of said Honolulu Plantation Company herein "for its damages of every kind and character in this case," was formerly, to wit, on January 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000.

J. J. DUNNE.

Subscribed and sworn to before me this 20th day of March, 1902.

[Seal] W. B. MALING,

Clerk of said Court.

By Frank L. Hatch,

Deputy Clerk.

Exhibit No. 1.

[Title of Court and Cause.]

DECISION OF THE COURT ON MOTION OF PLAINTIFF FOR NEW TRIAL.

This action was brought by the United States to condemn the leasehold interest of the defendant, the Honolulu Plantation Company, in 561.2 acres of the lands desired by the United States, for a naval station.

A jury rendered a verdict therein on the 13th day of January, 1902, allowing $89,792 as the value of the leasehold in the 561.2 acres of land, and the sum of $15,208 as the value of the improvements on the said land, making a total of $105,000 for the whole interest of the defendant in the said lands.

When the verdict was rendered, both counsel for plaintiff and defendant demanded a new trial, the plaintiff following up such a demand by the proper notice of intention to move for a new trial on a day certain.

On that day the matter was submitted on briefs to be filed.

The principal question involved in the motion in the judgment of the Court is as to the verdict being excessive in amount, and not borne out by the weight of the evidence.

It is presumed that that jury intended to be controlled

in fixing the value of the leasehold interest in the lands by a preponderance of the evidence; but in the judgment of the Court they failed to do this.

I will review a few of the estimates placed upon the leasehold interests: Mr. Archer, the assessor of the Territory, and apparently a disinterested witness, placed a valuation of $25 per acre on the leasehold interest on this land. Mr. Herbert, to all intents an unwilling witness for the plaintiff, placed a valuation of from $75 to $100 per acre on the 342 acres shown by the evidence to have been cleared, and $25 per acre on the remaining 219 acres, making an average of from $54 to $71 per acre on the whole 561.2 acres.

The testimony of Mr. Low, the manager of the defendant, and who represented the defendant throughout the trial, is glaringly and curiously inconsistent. He gave five different estimates as to the value of this leasehold, four of them widely varying. In his sworn answer filed herein, he alleges that the defendant would be damaged by the taking of this land in the sum of $200,000 less $55,055 for alleged improvements on said land, placing the valuation of the leasehold in the lands alone at $144,045.

On the trial the same witness testified that the whole interest of the defendant in the leasehold in these lands was worth $400,000.

He further testified that the valuation of the land was $300 per acre without the encumbrances of the leases, but with the leases it would be worth $262 per acre, or about what the average of the estimates of Archer and Herbert would be in this case.

It further appears that in accordance with the laws of

the territory, Mr. Low, acting as the manager of the defendant, made a return to the assessor for the year 1900, in which he swore to the value of the leasehold interests of the defendant in 4,720 acres of land, including the 561.2 in controversy, at $50,000; making an average value of about $15 per acre; while for the year 1901, he returned the same leasehold interests covering a trifle more acreage amounting to 4,774 acres, and including the same 561.2 acres in controversy, at $50,000, an average of $17 per acre.

The evidence showed that a portion of these leased lands other than the 561.2 acres are now and for two years last past has been cultivated to cane and apparently are quite as valuable as the land in controversy.

It is further in evidence that these tax returns are required by law to be and were sworn to by Mr. Low representing the defendant, and it is further required by said law that these returns shall represent the actual cash value of the property. It is presumed that the defendant through its manager, Mr. Low, was swearing to the truth when these returns were made, and if so, how is this testimony on the trial to be reconciled therewith?

The compensation for this leasehold must be just, and it must be admitted that defendant should not have a judgment for more than its property is worth, and the value of the property to be taken must be fixed by the rational and usual means. This value should have been obtained by the jury from a fair and reasonable analysis of all the evidence given by the witnesses on the trial.

So the Court is largely controlled in deciding this motion by the admitted sworn statements of Mr. Low as to the value of the leasehold interests in this land at a time

when there was no reason to inflate its value. Low must have known more of the value of this leasehold than any other witness called by the defendant or by plaintiff, and courts will not permit interested parties to blow hot and cold according to their developed interests in a case at bar.

And again, it is not denied that within three years before the commencement of this case, the Dowsett lease which had then ten years to run was purchased outright by the defendant, including all rents fully paid up for the sum of $20,000. This lease then and now covering (including the 561.2 acres in controversy) some 2,900 acres of land, of which the defendant is now in possession under said lease and much of which is being cultivated.

There is no testimony that this land has ever produced any income, and while 342 acres of the 561.2 has been cleared, it has never been cultivated to cane nor has any crop ever been produced upon it. And while it may be possible to raise cane on this land or part of it with plenty of water, yet it is shallow and much of it is adobe.

The testimony of the eight witnesses called for defendant as experts, as to the value of this leasehold interest, varied in amounts from $400,000 to $239,400. In the mind of the Court, these estimates were exaggerations and were greatly in excess of any value shown to be possessed by this leasehold interest by the party chiefly in interest, the defendant, through its manager Mr. Low—they were mainly lumping estimates of the value of the property and apparently purely speculative, based upon what this land might possibly produce under given con-

ditions not shown to exist, and from a careful examination of the testimony of at least four of these witnesses (Mr. Ahrens, Mr. Goodale, Mr. Renton and Mr. Meyers, all of whom were plantation managers), it will be seen that in each instance a value is fixed upon this leasehold interest of 561.2 acres far in excess of the amount of the valuation approximately placed upon the lands on the plantation in which they were each managers, and in some of them largely interested. These latter plantations had long been cropped with cane and are all producing incomes now, while no income has ever been produced from this land nor cane grown thereon.

Neither the jury nor the Court is bound by the opinions of expert witnesses unless they are in harmony with the weight of the testimony; but it may consider them in connection with all the other facts in evidence.

In view of all of the circumstances a new trial might possibly be properly had. As has been before stated, upon the rendition of the verdict of this case, a demand for a new trial was made by both counsel for plaintiff and defendant, neither of whom was satisfied with the verdict of the jury.

However, upon a careful consideration of the reasons advanced both for and against the motion made by the plaintiff, and after a lengthy examination of the whole of the record including the testimony offered on behalf of both parties and of the able briefs filed herein, I am of the opinion that the amount of the verdict rendered by the jury is excessive and not in conformity with the weight of the evidence. The Court will not interpose its judgment in opposition to that of the jury by expressing an amount which in its opinion would be a just compensation for the property of the defendant, but

if the jury had returned a verdict in any amount not to exceed seventy-five thousand dollars, this Court would have allowed a judgment to have been entered in accordance therewith.

It is therefore the judgment of the Court that if the defendant remits from the verdict rendered in its favor thirty thousand dollars, leaving the sum of seventy-five thousand dollars as full compensation for its damages of every kind and character in this case, then the motion made by the plaintiff for a new trial will be denied. This election must be made by the defendant within three days from the date hereof by the filing with the clerk of this court a written consent to the modification of the verdict in that particular, and the entry of the judgment in accordance therewith. Otherwise a new trial will be granted.

January 25th, 1902.

(Signed) ESTEE,
Judge.

And be it further remembered that thereafter, to wit, on May 5th, 1902, said motion for said new trial was submitted on briefs to said Court for its decision; said defendant, said Honolulu Plantation Company, filing its brief on May 9th, 1902, and said plaintiff and petitioner filing its brief on May 10th, 1902.

And be it further remembered that thereafter, to wit, on May 13th, 1902, said Court made, gave and rendered its decision upon said motion for said new trial, and said decision was and is as follows, to wit:

In the United States District Court, in and for the District of Hawaii.

THE UNITED STATES OF AMERICA,
vs.
THE HONOLULU PLANTATION COMPANY (a Corporation) et al.

Opinion on Motion of Defendant for New Trial.

On the third day of March, 1902, the above case came on for the second trial before a jury. Witnesses were produced and sworn for both sides, and the case heard. On the eleventh day of March, 1902, the jury returned a verdict in favor of the complainant condemning the leasehold interest in the 561.2 acres of land as described in the bill of complaint, and also rendered a money verdict in favor of the defendant, assessing the just compensation for the said leasehold interest of the defendant in the said lands at the sum of $105,523.

On the twentieth day of March, 1902, a notice and motion for new trial was made and filed on the part of the complainant in the action. The grounds of such motion were stated generally to be the following:

1. Insufficiency of the evidence to justify the verdict.

2. That the verdict was contrary to and against the law and the evidence.

3. That said verdict is not sustained by either the law or the evidence, or the weight of the evidence herein.

4. That the said verdict is excessive in this, that it attempts to award excessive, unreasonable and inconsistent compensation or damages herein.

5. That the verdict is contrary to and against the charge of the Court herein.

6. Errors in law occurring at the trial and excepted to by the plaintiff.

An assignment of errors under each of said grounds is also specified, which it is unnecessary to herein set out.

The hearing on said motion for new trial was postponed from time to time but was finally submitted on briefs on the fifth day of May, 1902.

This case has been twice tried before a jury, the object being to fix the value of the defendants' leasehold interest in the 561.2 acres of land described in the complaint, and in both cases the verdicts were practically the same, the difference in amount being nominal.

The verdict in the first case was $105,000, and it was deemed excessive by the Court, who for that reason granted a new trial unless the defendant would accept a diminished amount; namely, $75,000. This the defendant declined to do, and the second trial was therefore had, resulting in the verdict of $102,523, as before stated. This amount the Court also believes to be excessive above the sum of $75,000, in view of all the testimony in the case as it presented itself to the mind of the Court. And while it seems to be well settled that under the law, the Court can again set the verdict aside and grant a new trial upon the same terms as in the former trial if in its discretion it sees fit to do so, yet

the consensus of the best judgment of the courts as found in the decisions is, that where no rule of law has been violated, the Court will not, after two concurring verdicts, grant a new trial if the questions to be tried depend wholly on matters of fact; although the verdict is, in the judgment of the Court, against the weight of the evidence. (Joyce vs. Charleston Ice Manufacturing Co., 50 Fed. 371-5, Clark vs. Barney Dumping Co., 109 Fed. 235.)

I might say in this case as was said by the Court in the case of Frost vs. Brown, 2 Bay. 139, where as in the case at bar two trials were had resulting practically in the same verdict, that "although I would never surrender a plain and certain rule of law to the caprice of a jury or any number of juries, yet in a case where the law is complicated with facts so that the construction and application of it must depend on the findings of facts, two concurring verdicts, even against the opinion of the judges, ought to be conclusive." (Joyce vs. Charleston Mfg. Co., supra.)

I have made an examination of the very lengthy assignment of errors of law alleged to have occurred at the trial of this case, and have read with much care the elaborate brief of the counsel for complainant, in addition to the brief of defendant's counsel. I do not deem it necessary to go into an exhaustive discussion of those alleged errors. No reason has been presented to me which I think is sufficiently forceful to lead me to change my views as indicated by my rulings at the trial; and while some slight errors may have and doubtless did creep into the record, yet I find none which in my judgment were material, or so prejudicial to the interests of

the complainant as to have materially influenced the verdict of the jury.

The motion for a new trial is therefore denied.

May 13th, 1902.

ESTEE,

Judge.

And be it further remembered that thereafter said Court made, gave, rendered and filed its judgment herein upon and pursuant to said verdict, as said judgment now appears in the files of said Court and cause; to which said judgment and to the making, giving, rendering and filing thereof and the whole thereof, said plaintiff and petitioner then and there duly excepted. (Exception No. 49.) And said plaintiff and petitioner now assigns the same as error.

Assignment and Specifications of Errors.

And now comes the above-named plaintiff and petitioner and assigns and specifies the following errors occurring at the trial of said action, to wit:

1. Particulars wherein the evidence is insufficient to justify said verdict.

(a) Said evidence is wholly insufficient to justify said verdict in this, that there is no evidence to support the finding that the market value of the leasehold interest of said Honolulu Plantation Company in the land involved herein is of the sum of $94,000, or any other sum in excess of $75,000; and in this behalf plaintiff and petitioner shows in and by the affidavit of J. J. Dunne, Esq., Assistant United States Attorney for said District, hereto attached, made a part hereof, and marked Exhibit "A," and in and by the judgment of said Court in said affidavit set out, that, in the above-entitled action be-

tween the same parties, upon the same pleadings, and upon the same evidence, the "full compensation" of said Honolulu Plantation Company herein "for its damages of every kind and character in this case," was formerly, to wit, on January 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000; said "full compensation" including said market value of said leasehold interest.

(b) Said evidence is wholly insufficient to justify said verdict in this, that there is no evidence to support the finding that the market value of all improvements upon the property condemned in the above-entitled action is of the sum of $8,523, or any other sum; and in this behalf plaintiff and petitioner shows in and by the affidavit of J. J. Dunne, Esq., Assistant United States Attorney for said District, hereto attached, made a part hereof and marked Exhibit "A," and in and by the judgment of said Court in said affidavit set out, that, in the above-entitled action between the same parties, upon the same pleadings, and upon the same evidence, the "full compensation" of said Honolulu Plantation Company herein for "its damages of every kind and character in this case," was formerly, to wit, on January 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000.

(c) The evidence is wholly insufficient to justify said verdict in this, that it wholly fails to show that said Honolulu Plantation Company is entitled to receive as compensation *of* damages for the taking and condemnation of their leasehold interests in the land involved in the above-entitled action, any sum whatever in excess of $75,000.

(d) The evidence is wholly insufficient to justify said verdict in this, that it wholly fails to show that said

Honolulu Plantation Company is entitled to receive as compensation or damages for the taking and condemnation of improvements upon said land—any sum whatever.

(e) Said evidence is wholly insufficient to justify said verdict in this, that it wholly fails to show any value of said leasehold interest in excess of $75,000.

(f) Said evidence is wholly insufficient to justify said verdict in this, that it wholly fails to show either the existence upon the land condemned herein of any improvements, or the market value, if any, of such improvements.

2. Particulars in which said verdict is contrary to and against the law and the evidence.

(a) Said verdict is contrary to and against the law and the evidence in this, that it was made, given and rendered by a jury.

(b) Said verdict is contrary to and against the law and the evidence, because of errors of law occurring during the trial and excepted to by plaintiff and petitioner; and plaintiff and petitioner hereby makes express reference to the detail specifications herein included in the assignment of errors under the paragraph No. 6, hereinafter set forth, and makes them and each of them part and parcel of this specification.

(c) Said verdict is contrary to and against the law and the evidence, because of the insufficiency of the evidence to justify said verdict, and said plaintiff and petitioner hereby makes express reference to the detail specifications herein included in the assignment of errors under the paragraph No. 1, last hereinbefore set forth, and makes them and each of them part and parcel of this specification.

(d) Said verdict is contrary to and against the law and the evidence, because of its finding that the market value of the leasehold interests of said Honolulu Plantation Company in the land herein condemned is of the sum of $94,000, or any other sum whatever in excess of $75,000.

(e) Said verdict is contrary to and against the law and the evidence, because of its finding that the value of all improvements upon the property condemned in the above-entitled action is of the sum of $8,523, or any other sum whatever.

(f) Said verdict is contrary to and against the law and the evidence, because as shown in and by the affidavit of J. J. Dunne, Esq., Assistant United States Attorney for said District, hereto attached, made a part hereof, and marked Exhibit "A," and in and by the judgment of said Court in said affidavit set out, it appears that in the above-entitled action between the same parties, upon the same pleadings and upon the same evidence, the "full compensation" of said Honolulu Plantation Company herein "for its full damages of every kind and character in this case," was formerly, to wit, on January 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000.

3. Particulars in which said verdict is not sustained or justified by either the law or the evidence or the weight of the evidence.

(a) Said verdict is not sustained or justified by either the law or the evidence or the weight of the evidence herein, because said verdict is contrary to and against the law and the evidence in this, that it was made, given and rendered by the jury.

(b) Said verdict is not sustained or justified by either the law or the evidence or the weight of the evidence herein, because of errors of law occurring during the trial and excepted to by plaintiff and petitioner; and plaintiff and petitioner hereby makes express reference to the detail specifications herein included in the assignment of errors under paragraph No. 6, hereinafter set forth, and makes them and each of them part and parcel of this specification.

(c) Said verdict is not sustained or justified by either the law or the evidence or the weight of the evidence, herein, because of the insufficiency of the evidence to justify said verdict; and said plaintiff and petitioner hereby makes express reference to the detail specifications herein included in the assignment of errors under the aforesaid paragraph No. 1, last hereinabove set forth, and makes them and each of them part and parcel of this specification.

(d) Said verdict is not sustained or justified by either the law or the evidence or the weight of the evidence herein, because of its finding that the market value of the leasehold interest of said Honolulu Plantation Company in the land herein condemned is of the sum of $94,000 or any other sum whatever in excess of $75,000.

(e) Said verdict is not sustained or justified by either the law or the evidence or the weight of the evidence herein, because of its finding that the value of all improvement upon the property condemned in the above-entitled action is of the sum of $8,523, or any other sum whatever.

(f) Said verdict is not sustained or justified by either the law or the evidence or the weight of the evidence

herein, because as shown in and by the affidavit of J. J. Dunne, Esq., Assistant United States Attorney for said District, hereto attached, made a part hereof, and marked Exhibit "A," and in and by the judgment of said Court in said affidavit set out, it appears that in the above-entitled action between the same parties upon the same pleadings and upon the same evidence, the "full compensation" of said Honolulu Plantation Company herein "for its damages of every kind and character in this case," was formerly, to wit, on January 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000.

4. Particulars in which said verdict is excessive.

(a) That said verdict is excessive in this, that it attempts to award excessive, unreasonable and inconsistent compensation or damages herein.

(b) The compensation or damages attempted to be awarded by said verdict of said jury, is excessive, unreasonable and inconsistent, in this, that the amount attempted to be awarded by said verdict as compensation or damages for the taking of the alleged improvements claimed to have been upon the land sought to be condemned herein, was and is grossly and unreasonably excessive, without the evidence, and with no evidence to support it; it not appearing in the evidence either that any improvements were upon the land sought to be condemned or what, if any, was the market value thereof.

(c) The compensation or damages attempted to be awarded by said verdict of said jury, is excessive, unreasonable and inconsistent in this, that the amount attempted to be awarded by said verdict as compensation or damages for the taking of the leasehold interest

claimed in the land sought to be condemned by said Honolulu Plantation Company was and is grossly and unreasonably excessive, without the evidence, with no evidence to support it, and against the evidence in the case.

(d) The compensation or damages attempted to be awarded by said verdict of said jury, is excessive, unreasonable and inconsistent in this, that as shown in and by the affidavit of J. J. Dunne, Esq., Assistant United States Attorney for said District, hereto attached and made a part hereof, and marked Exhibit "A," and in and by the judgment of said Court in said affidavit set out, it appears that, in the above-entitled action between the same parties upon the same pleadings and upon the same evidence, the "full compensation" of said Honolulu Plantation Company herein "for its damages of every kind and character in this case," was formerly, to wit, on January 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000.

5. Particulars in which said verdict is contrary to and against the charge of the Court.

(a) In arriving at said verdict, said jury failed to consider said testimony as a whole, or fairly to weigh all the testimony both direct and indirect, and with all reasonable inferences to be drawn therefrom; but, on the contrary, limited its consideration to isolated portions of said testimony.

(b) In arriving at said verdict, said jury failed to consider the fair market value of the property involved at the time of the taking, to wit, on July 6th, 1901, in its then actual condition.

(c) In arriving at said verdict, said jury was neither

guided nor governed by the preponderance of the evidence.

(d) In arriving at said verdict, said jury considered the mere speculative or possible value and not market value.

(e) In arriving at said verdict, said jury was neither guided nor governed by the amount of the just compensation to be awarded to the defendant herein for the taking of its property.

(f) In arriving at said verdict, said jury gave undue and excessive weight to the expert testimony introduced by said defendant.

6. Particulars of the errors in law occurring during the trial, and excepted to by said plaintiff and petitioner.

(a) Said Court erred in overruling the objections of said plaintiff and petitioner to the claim and demand of said defendant, said Honolulu Plantation Company, for a trial of said cause before a jury of the country, and in granting said claim and demand, and in permitting and ordering said cause and said issues to be tried before a jury of the country. (Exception No. 1.)

(b) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness U. S. G. White: "Now, do you know whether there is a mill belonging to the plantation a mile above this land?" (Exception No. 2.)

(c) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness U. S. G. White: "And that it stands now where it stood on the 6th of July, 1901?" (Exception No. 3.)

(d) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness U. S. G. White: "What was the size, Captain, of that mill?" (Exception No. 4.)

(e) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness U. S. G. White: "How far is this Halawa Valley that you have testified about in your first answer that I asked in regard to it from the land in question—the nearest portion to the land in question?" (Exception No. 5.)

(f) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness J. W. Pratt: "Now, Mr. Pratt, how is this return made up? What kind of a return is under the law?" (Exception No. 6.)

(g) Said Court erred in overruling the objections by plaintiff and petitioner to the following question asked on cross-examination from the witness F. K. Archer: "Now, Mr. Archer, do you know what that land is capable of yielding in sugar?" (Exception No. 7.)

(h) Said Court erred in denying to said plaintiff and petitioner an opportunity to state its objections to the following question asked on cross-examination from the witness F. K. Archer: "Do you know whether the Honolulu Plantation Company had on the 6th of July, 1901, a water supply that was immediately available to this land in question?" (Exception No. 8.)

(i) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness F. K. Archer:

"What was the extent of that water supply?" (Exception No. 9.)

(j) Said Court erred in denying the motion of plaintiff and petitioner to strike out the answer and testimony given by said witness F. K. Archer on cross-examination in response to the question: "What was the extent of that water supply?" (Exception No. 10.)

(k) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness F. K. Archer: "Do you know *whether is a flowing* stream immediately available for use upon this land within the lines of the Honolulu Plantation Company?" (Exception No. 11.)

(l) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness F. K. Archer: "Well, now, assuming that the land is in the same condition—or substantially the same condition on the 6th day of July, 1901, and considering its situation and the uses it might be put to, and the improvements put upon it, the plowing that has been done, the clearing that has been done, all of its usefulness, the whole property of the Honolulu Plantation Company that is available for use in connection with that land, assuming those things —what do you say as to the value of the leasehold interest?" (Exception No. 12.)

(m) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness F. W. Thrum: "Now, Mr. Thrum, how do you know what this land will

produce, or whether it is good cane land or not?" (Exception No. 13.)

(n) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness F. W. Thrum. "Do you know the yield of the Halawa Valley?" (Exception No. 14.)

(o) The Court erred in sustaining the objections of said defendant, said Honolulu Plantation Company to the following question asked by said plaintiff and petitioner from the witness F. W. Thrum: "If a leasehold interest of forty years on that particular piece of land, seven years of which was fully paid up, the balance of which was held at three and one-half per cent of the sugar produced, provided it did not fall below $400,000 per annum for the entire tract of land, including other lands, the first lease including 2,900 acres, and the second 2,122 acres, if such a leasehold were offered for sale in the public market—what would you be willing to pay per acre for it?" (Exception No. 15.)

(p) Said Court erred in granting the motion of said defendant, said Honolulu Plantation Company, to strike out from the testimony of the witness F. W. Thrum, the following passage: "I stated that part of my occupation on the Ewa plantation was the selection of cane land. The first case was in 1896, when Mr. Lowrie was the manager, and many acres were valuable for the cultivation of cane below field 19—that was then the extent of the plantation in that direction. I was sent out there, and started at field 19, and I cut lines through the algeroba, the glue and the lantana, and was to report the land that I considered valuable for sugar cane, and

after two or three weeks later I got around this tract, field 19, and reported to him the number of acres that I considered valuable for sugar cane in that vicinity. My report was accepted." (Exception No. 16.)

(q) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness J. A. McCandless: "What is the value set on that leasehold interest of 142 acres referring to a certain tract of 142 acres on Ford Island, originally sought to be condemned in this action, but to which a discontinuance of the action was subsequently made and filed by plaintiff and petitioner and ordered by the Court?" (Exception No. 17.)

(r) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on direct examination from the witness, J. A. Low: "Just explain the nature of your duties and the nature of your experience and the nature of your study on the subject of the growth and manufacture of sugar?" (Exception No. 18.)

(s) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked on direct examination from the witness, J. A. Low: "Why not---that is to say—why was not sugar grown on this land by the Honolulu Plantation Company?" (Exception No. 19.)

(t) Said Court erred in denying the motion of plaintiff and petitioner to strike out the answer and testimony given by the witness, C. Bolte on direct examination in response to the question," now, considering the property sought to be condemned in the state in which you saw it it on the day that you viewed it, that it is in substan-

tially the same state on the 6th of July, 1901, considering its situation and the uses that might be made of it and to which it was adapted, and assuming that the plantation has a thirty-nine years' lease, seven years' rental of which has been paid, and the remaining thirty-two years is upon the basis of a crop payment, that is, three and one-half per cent of the sugar produced, and the payment of the taxes, the lease including other land, the minimum rent upon the other land which is not material, and assuming that the 342 acres of cane land in the area sought to be condemned—what in your opinion was the value of the leasehold interest of that land on the 6th of July, 1901, to the Honolulu Plantation Company?" (Exception No. 20.)

(u) Said Court erred in denying the motion of plaintiff and petitioner to strike out the testimony of said witness, C. Bolte, given on direct examination relative to the value of this leasehold to a particular individual—to the Honolulu Plantation Company. (Exception No. 21.)

(v) Said Court erred in denying the motion of plaintiff and petitioner to strike out the answer and testimony of the witness, J. A. Low, during his direct examination, when resumed, in response to the question: "What was the value of the use of the buildings upon that land for the remainder of your term of the lease?" (Exception No. 22.)

(w) Said Court erred in denying the motion of plaintiff and petitioner to strike out the testimony of the witness, J. A. Low, on direct examination, when resumed relative to the value of buildings upon the land sought to be condemned to the Honolulu Plantation Company." (Exception No. 23.)

(x) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on direct examination from the witness, J. A. Low: "What was its (the property sought to be condemned) value on the 6th of July, 1901?" (Exception No. 24.)

(y) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the said witness, J. A. Low, during his direct examination, when resumed: "Mr. Low, that portion of the tax return read in evidence here, showing the statement under the heading 'Leasehold Interest—return of Real Estate Leases as per schedule "B," $50,000'—what have you to say in regard to it, Mr. Low, by way of explanation?" (Exception No. 25.)

(z) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness, W. R. Castle on direct examination: "What knowledge have you of the development of the plantation in that district (meaning the District of Ewa)?" (Exception No. 26.)

(aa) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness, W. R. Castle, on direct examination: "Now, Mr. Castle, considering the property sought to be condemned, the state which you saw it on the day which you viewed, it, and assuming that it was in substantially the same state on July 6th. 1901, and taking into consideration the situation of the land and all the uses that might be made of it, and assuming that the plantation has a thirty-

nine years' lease, and that seven years' rental has been paid, and that the rental for thirty-two years is on the basis of three and one-half per cent of the sugar produced, and the payment of taxes (the lease covering other lands in addition to this), and for a minimum rental, and assuming that 342 acres of cane land of the land sought to be condemned—what in your opinion was the market value of the leasehold on the 6th of July, 1901?" (Exception No. 27.)

(bb) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness, W. W. Goodale, on direct examination: "Now, Mr. Goodale, considering this land sought to be condemned, in the state in which you saw it on the day that you viewed it, and assume that it is in substantially the same state or was on the 6th of July last year, and considering the situation of it and the uses that might be made of the land and to which it was adapted, and assuming that the plantation had a thirty-nine years' lease, seven years' rental of which has been paid, the rental for 32 years is based upon three and one-half per cent of the sugar produced (the particular lease covers other land as well as this), has a minimum basis of rental and includes other land, and assume that there is 342 acres of cane land—what in your opinion is the market value of the leasehold the Honolulu Company of the land sought to be condemned on the 6th of July last?" (Exception No. 28.)

(cc) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness, G. F. Renton, on direct examination: "Now, consider-

ing this property sought to be condemned in the state that you saw it on that day that you viewed it, and assuming that it is in substantially the same situation on the 6th of July, 1901, and assuming that there is a lease for thirty-nine years, seven years of which has been paid up, and the rental for thirty-two years is on the basis of three and a half per cent of the sugar produced—(the lease covers other land as well as this), has a minimum rental which, however, has no materiality to the question—the payment of taxes and considering all the uses and purposes to be made of the land and the situation in which it exists on that day, and assuming, further, that there was 342 acres of cane land within the area sought to be condemned—what in your opinion was the market value of the leasehold interest of the Honolulu Plantation Company on the 6th day of July, last year?" Exception No. 29.)

(dd) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness, F. Meyer, on direct examination: "Well, considering the property sought to be condemned as to its location and all the uses that could be made of it, and assuming that it is substantially in the same situation as it was on the 6th day of July, 1901, and assuming that there is a lease of thirty-nine years, seven years of which are paid up, and thirty-two years of which are on the basis of three and one-half per cent of the sugar produced, together with the payment of taxes, and also saying that there is a minimum rental, that this three and one-half per cent should not be less than $4,000 a year, and assuming that there are 342 acres of cane land in the area

sought to be condemned—what in your opinion was the market value of that leasehold interest on the 6th of July, 1901?" (Exception No. 30.)

(ee) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness, A. Ahrens, on direct examination: "Now, considering the property sought to be condemned, and in the same space in which you saw it on the day that you viewed, that is, in October; and assuming that it was in substantially the same situation that it was on July 6th, 1901, and after taking into consideration the use that might be made, the purpose to which it is adapted, and assuming that there is a thirty-nine years' lease, seven years' of which are paid up, and the balance of the term is upon the basis of a three and one-half per cent of the stock, and I will also state for your information that there is a minimum basis in which includes other land, now, assuming that there was 342 acres of cane land included within the 561 acres—what in your opinion was the market value of the leasehold interest on the 6th of July, last?" (Exception No. 31.)

(ff) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness, J. T. Crawley, on direct examination: "What do you know about the productive capacity of the soil of this land?" (Exception No. 32.)

(gg) Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness, J. F. Morgan, on direct examination: "Now, Mr. Morgan,

taking into consideration the property sought to be condemned and its location and situation and what can be done with the situation as you saw it on the day that you viewed it, the uses and purposes that the land can be put to, and assuming that the Honolulu Plantation Company has a thirty-nine years' lease, seven years' of which were paid up and the balance of the term is based upon three and one-half per cent of the sugar produced from the land. the lease also covering other lands, having a rental basis, and assuming that there was 342 acres of cane land upon the land sought to be condemned—what would you say was the market value of that leasehold interest on the 6th of July, 1901?" (Exception No. 33.)

(hh) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the said witness, J. F. Morgan, on redirect examination: "How many mills are there in the vicinity of this land?" (Exception No. 34.)

(ii) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantaton Company from the witness, L. A. Thurston, on direct examination: "Now, considering the property sought to be condemned, Mr. Thurston, was in the same state in which you saw it on the day that you viewed it last, and assuming that it was in substantially the same state and condition on the 6th of July, 1901, and taking into consideration the location of the land and of the uses to which it might be put, and to which it was adapted, and assuming the plantation has thirty-nine years' lease, seven years' rental of

which is paid up, and the rental for thirty-two years thereof is on a basis of three and one-half per cent of the sugar produced, and the payment of taxes (I will say that the leasehold covers other land, and has a minimum rental of $4,000 covering practically 2,000 acres), and assuming that there was 342 acres of cane land in the area sought to be condemned, what is your opinion of the market value of that leasehold interest on the 6th of July, 1901?" (Exception No. 35.)

(jj) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness, L. A. Thurston, on redirect examination: "What can you say as to the quality of the soil on the land sought to be condemned as to its producing any crop of sugar?" (Exception No. 36.)

(kk) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness, J. R. Higby, on direct examination: "Are you able to state the use of those buildings for the term of thirty-nine years?" (Exception No. 37.)

(ll) Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness, J. R. Higby, on direct examination: "Assuming that their life will be finished, what is the value of those buildings?" (Exception No. 38.)

(mm) Said Court erred in refusing to give to said jury the first instruction requested by said plaintiff and petitioner. (Exception No. 39.)

(nn) Said Court erred in refusing to give to said jury

the second instruction requested by said plaintiff and petitioner. (Exception No. 40.)

(oo) Said Court ererd in refusing to give to said jury the fourth instruction requested by said plaintiff and petitioner. (Exception No. 41.)

(pp) Said Court erred in refusing to give to said jury the fifth instruction requested by said plaintiff and petitioner. (Exception No. 42.)

(qq.) Said Court erred in refusing to give to said jury the sixth instruction requested by said plaintiff and petitioner. (Exception No. 43.)

(rr) Said Court erred in refusing to give to said jury the seventh instruction requested by said plaintiff and petitioner. (Exception No. 44.)

(ss) Said Court erred in refusing to give to said jury the eighth instruction requested by said plaintiff and petitioner. (Exception No. 45.)

(tt) Said Court erred in refusing to give to said jury the ninth instruction requested by said plaintiff and petitioner. (Exception No. 46.)

(uu) Said Court erred in permitting to be rendered, and in receiving the verdict herein. (Exception No. 47.)

(vv) Said Court erred in its ruling and in the whole thereon denying the motion for a new trial herein, made by said plaintiff and petitioner. (Exception No. 48.)

(ww) Said Court erred in making, giving, rendering and filing its judgment herein upon and pursuant to said verdict. (Exception No. 49.)

And be it further remembered that the above and foregoing bill of exceptions is a full, true and correct statement of all the evidence in the cause and also and in addition thereto, a full, true and correct statement of all

objections, rulings, exceptions relied on by plaintiff and petitioner, instructions requested by plaintiff and petitioner, charge of the Court, and other proceedings in and upon the above-entitled cause and said trial, and that no other or different evidence, objections, rulings, exceptions relied on by plaintiff and petitioner, instructions requested by plaintiff and petitioner, charge of the Court, or other proceedings were had in or upon the above-entitled cause or said trial.

And now, within due time, said plaintiff and petitioner presents and tenders this, its said bill of exceptions to said Court, and in order that said exceptions may be preserved and perpetuated, and in furtherance of justice and that right may be done, said plaintiff and petitioner presents the foregoing as its bill of exceptions herein, and prays that the same may be settled, approved and allowed, and signed and certified as provided by law.

Dated Honolulu, Hawaii, May 31st, 1902.

THE UNITED STATES OF AMERICA,
Plaintiff and Petitioner,
By R. W. BRECKONS,
United States Attorney, and
J. J. DUNNE,
Assistant United States Attorney,
Attorneys for Plaintiff and Petitioner.

The foregoing bill of exceptions, having been brought on regularly before the above-entitled Court on this 9th day of July, 1902, upon the application of the above-named plaintiff and petitioner for the settlement and certification thereof:

Now, therefore, on motion of R. W. Breckons, United States Attorney for said District, and J. J. Dunne, Assistant United States Attorney for said District, it is hereby ordered that the foregoing bill of exceptions heretofore filed by said plaintiff and petitioner in this cause, as the same now stands, be, and the same is hereby settled, approved and allowed, as a true bill of exceptions

herein, and that the same as so settled, approved and allowed be now and here certified accordingly by the undersigned, the Judge of said court presiding herein, and who presided in said cause since its commencement; and that said bill of exceptions, when so certified to, be filed by the clerk of said Court.

Dated Honolulu, Hawaii, July 9th, 1902.

MORRIS M. ESTEE,
Judge of said Court.

[Endorsed]: Title of Court and Cause. Bill of Exceptions. Filed May 31st, 1902, at 11:30 o'clock A. M. W. B. Maling, Clerk.

In the District Court of the United States, in and for the District of Hawaii.

THE UNITED STATES OF AMERICA,
Plaintiff and Petitioner,
vs.
HONOLULU PLANTATION COMPANY (a Corporation), et al.,
Defendants and Respondents.

Stipulation.

In the above-entitled cause, it is hereby stipulated between the respective parties that the bill of exceptions heretofore filed by said respective parties be presented for settlement as of this day, June 4th, 1902, notwithstanding any previous notice.

J. J. DUNNE,
Assistant United States Attorney,
Counsel for Plaintiff.
HATCH & SILLIMAN,
Counsel for Defendant.

Order of Court.

In the above-entitled matter, it is hereby ordered that counsel for the above-named parties examine said bill of exceptions and agree as to so much thereof as they may be advised; and should said counsel be unable to agree, then on Monday, June 9th, 1902, at 10 o'clock A. M., they shall report to said Court for adjustment and settlement any matters as to which they may not be able to agree.

Dated Honolulu, Hawaii, June 4th, 1902.

MORRIS M. ESTEE,
Judge of said Court.

[Endorsed]: Title of Court and Cause. Filed June 4th, 1902. W. B. Maling, Clerk. By Frank L. Hatch, Deputy Clerk.

In the District Court of the United States, in and for the District of Hawaii.

THE UNITED STATES OF AMERICA,
Plaintiff and Petitioner,
vs.
HONOLULU PLANTATION COMPANY (a Corporation), et al.,
Defendants and Respondents.

Motion to Amend Plaintiff's Bill of Exceptions.

Comes now the Honolulu Plantation Company, defendant above named, and moves this Honorable Court that the bill of exceptions of the United States of America, plaintiff above named, filed in the above-entitled cause, and dated the 31st day of May, 1902, be amended in the following particulars, to wit:

First.—By striking out the first exception in said bill of exceptions contained, said exception relating to a demand for and the granting of a jury trial in said cause, upon the ground that no such exception was taken by the said plaintiff.

Second.—By striking out the forty-eighth exception in said bill of exceptions contained, being the exception taken by the said plaintiff to the ruling of the Court denying the motion for a new trial, upon the ground that the granting or denying of such motion for a new trial is not the proper subject of exception herein.

Third.—By striking out all of that portion of said bill of exceptions contained in the paragraph on page 222 thereof, wherein it is stated that said bill of exceptions is a full, true and correct statement of all the evidence and the objections, rulings and exceptions, etc., and that no other or different evidence, objections, etc., or other proceedings, were had in or upon the above-entitled cause or said trial, upon the ground that such statements so contained in said paragraph do not conform to the actual facts.

This motion is based upon all of the files and records in said cause, together with the transcript of testimony therein as reported by the official stenographer of said Court.

HATCH & SILLIMAN,

Attorneys for Defendant, the Honolulu Plantation Company.

I hereby admit the physical receipt of a copy of the above, this June 9, 1902, reserving all objections.

J. J. DUNNE,

Assistant United States Attorney.

[Endorsed]: Title of Court and Cause. Motion. Filed June 9th, 1902. W. B. Maling, Clerk. By Frank L. Hatch, Deputy Clerk.

United States of America,
Territory of Hawaii.

In the District Court of the United States, in and for the Territory of Hawaii.

THE UNITED STATES OF AMERICA,
Plaintiff and Petitioner,
vs.
HONOLULU PLANTATION COMPANY (a Corporation), et al.,
Defendants and Respondents.

Stipulation.

In the above-entitled matter it is hereby stipulated and agreed that, with the consent and approval of said Court, the further hearing of the settlement of the respective bill of exceptions therein be continued until Monday, the 23d day of June, 1902.

Dated Honolulu, Hawaii, June 16th, 1902.

J. J. DUNNE,
Attorney for Plaintiff and Petitioner.
HATCH & SILLIMAN and
FRED W. MILVERTON,
Attorneys for Defendant and Respondent.

[Endorsed]: Title of Court and Cause. Filed June 16th, 1902. W. B. Maling, Clerk. By Frank L. Hatch, Deputy Clerk.

United States of America. }
District of Hawaii. }

In the District Court of the United States, in and for the District of Hawaii.

THE UNITED STATES OF AMERICA,
Plaintiff and Petitioner,

vs.

HONOLULU PLANTATION COMPANY (a Corporation), et al.,
Defendants and Respondents.

Supplemental Bill of Exceptions.

Be it remembered, that heretofore, and within due time, the above-named plaintiff and petitioner prepared, served, filed and presented for settlement upon its proposed bill of exceptions in the above-entitled cause. Upon the presentation of said bill to said Court for settlement, the above-named defendant objected to the exceptions therein contained, numbered, respectively, Exceptions 1 and 48..

Said Exception 1, as contained in said bill, was as follows, to wit:

"And be it further remembered that on September 20th, 1901, said defendant filed in said Court and with the clerk thereof its claim and demand for a trial in this cause before a jury of the country, and moved said Court that said cause be placed upon the jury calendar of said Court for the October term, 1901, or such other term as may be determined by said Court. Said claim and demand was then and there duly objected to, resisted and denied by the above-named plaintiff and petitioner, upon

the grounds that said claim and demand was and is contrary to the law, wholly unauthorized and illegal in proceedings for the taking of private property for public purposes, without warrant or authority of law or sanction or requirement of law under the constitution and laws of the United States, without warrant or authority of law or sanction or requirement of law under the constitution and laws of the Territory of Hawaii, or any or either of the aforesaid constitutions or laws, and wholly unauthorized and unjustified by any of the established principles of jurisprudence applicable thereto.

"And be it further remembered that thereafter, on October 10th, 1901, the hearing by said Court of said claim and demand for said jury trial came on regularly; and after argument thereon by counsel, said claim and demand was submitted to, and was taken under advisement by said Court for decision. And thereafter, to wit, on October 17th, 1901, the aforesaid matter of said claim and demand for said jury trial came on regularly for decision by said Court; and said Court then and there ordered that the case of, and the issues tendered and joined by, said defendant above named, to wit, Honolulu Plantation Company (a Corporation), one of the above-named defendants and respondents, be tried by and before a jury of the country, as claimed and demanded by said defendant; to which said order of said Court, and to the whole thereof, said plaintiff and petitioner then and there duly excepted, and now assigns the same, and the whole thereof as error. (Exception No. 1.) And said plaintiff and petitioner now assigns said ruling as error."

Said defendant objected to the allowance of said Ex-

ception No. 1 upon the ground that no such exception had been taken by said plaintiff and petitioner.

Said plaintiff and petitioner then offered in evidence, and the same was received and read in evidence, the following extracts from the minutes of said Court relating to said matter:

"Thursday, October 10th, 1901.

Court met pursuant to adjournment—Present: Honorable MORRIS M. ESTEE, District Judge, Presiding. Walter B. Maling, Clerk.

UNITED STATES
vs.
ESTATE OF B. P. BISHOP, Deceased, et al.
} No. 3.

The hearing of this cause came up on a motion and demand for a jury trial, heretofore filed in this court by each of the defendants in the above-entitled case. The Assistant United States Attorney, J. J. Dunne, Esq., appearing on behalf of the United States, and F. M. Hatch, Esq., and S. M. Ballou, Esq., appearing for the said defendants, and after argument by counsel the matter was submitted and was taken under advisement by the Court for decision.

It was then ordered that the Court adjourn until tomorrow morning at 10 o'clock." (Vol. 1, Minutes of said Court, p. 398.)

And thereupon said plaintiff and petitioner then offered in evidence, and the same was received and read in evidence, the following extracts from the minutes of said court relating to said matter:

"Thursday, October 17th, 1901.

Court met pursuant to adjournment—Present, Honorable MORRIS M. ESTEE, District Judge, Presiding. Walter B. Maling, Clerk.

THE UNITED STATES
vs.
ESTATE OF B. P. BISHOP, Deceased, et al.
} No. 3.

This cause came on regularly for hearing at this time for a decision by the Court on a motion and demand for a jury trial heretofore filed by each of the defendants in this case, J. J. Dunne, Esq., Assistant United States Attorney, appearing for the United States and R. D. Silliman, Esq., W. A. Stanley, Esq., and S. M. Ballou, Esq., appearing on behalf of the above-named defendants; and the Court ordered that the case of the defendant, Estate of Bernice Pauahi Bishop, deceased, and Joseph O. Carter, William F. Allen, William O. Smith, Samuel M. Damon and Alfred W. Carter, trustees under the will of Bernice Pauahi Bishop, deceased, and of the estate of said Bernice Pauahi Bishop, deceased, be set for the fourth Monday in November, 1901, at 10 o'clock A. M., to be tried by a jury in that case.

To which order allowing a jury in this case, the Assistant United States Attorney, on behalf of the United States, duly excepted, and asked for ten days' time within which to file a bill of exceptions, which request was granted by the Court.

It was further ordered that the cases of all of the other defendants in this matter be continued until the fourth Monday of November, 1901.

It was then ordered that Court adjourn until to-morrow morning at 10 o'clock." (Vol. 1, Minutes of said Court, p. 409.)

And be it further remembered that said F. M. Hatch, Esq., and R. D. Silliman, Esq, during all the times herein mentioned, were counsel of and for the Honolulu Plantation Company, a corporation, one of the defendants in said minutes referred to; and that W. A. Stanley, Esq, above mentioned, during all the times herein mentioned was counsel of and for Bishop and Company, a copartnership, and also counsel of and for estate of Bernice Pauahi Bishop, deceased, and the trustees of said estate, two of the other defendants in said minutes referred to; and that S. M. Ballou, Esq., above referred to, during all the times mentioned herein, was one of the counsel of and for said estate of Bernice Pauahi Bishop, deceased, and the trustees thereof, one of the defendants in said minutes referred to.

And be it further remembered that thereafter, and within due time, said plaintiff and petitioner prepared, served and filed its bill of exceptions to the above-mentioned order of said Court, and said Court, on October 26, 1901, settled, allowed, approved and certified said bill of exceptions.

And be it further remembered that each and all of the foregoing facts and matters were then and there duly called to the attention of said Court; but notwithstanding the same, said Court sustained said objection of said defendant, and disallowed and rejected said Exception No. 1; to which said ruling of said Court, said plaintiff and petitioner then and there duly excepted, and now assigns the same as error. (Exception No. 1.)

Said Exception No. 48, as contained in said bill of exceptions was the exception of said plaintiff and petitioner to the order of said Court denying plaintiff's and petitioner's motion for a new trial of said action. Within due time, said plaintiff and petitioner prepared, served and filed its motion for a new trial of the above-entitled action as to the issues therein joined between it and said Honolulu Plantation Company, one of the defendants above referred to and said motion for said new trial is fully set out in the bill of exceptions herein and is hereby referred to and made a part hereof. Said motion for a new trial was thereafter argued and submitted to said Court; and thereafter on May 13th, said Court denied said motion upon the grounds stated in its written opinion, a true copy of which appears in the aforesaid bill of exceptions, and is hereby referred to and made a part hereof, and to said ruling of said Court, and to the whole thereof, denying said motion for a new trial, said plaintiff and petitioner then and there duly excepted; and in said bill of exceptions assigned said ruling and the whole thereof as error, said exception being numbered Exception No. 48 in said bill of exceptions.

Said defendant objected to the allowance of said exception No. 48, upon the ground that said order of said Court denying said motion for a new trial was not the subject of the exception because not reviewable on appeal. Said plaintiff and petitioner then and there called the attention of the Court, within the rule laid down in Felton vs. Spiro, 78 Fed. Rep. 576, to its, said plaintiff and petitioner's, rights, to have the Court, upon said motion for new trial, weigh all the evidence, and exercise its discretion to say whether or not, in its opinion,

the verdict was so opposed to the weight of the evidence that a new trial should be granted; and further called the attention of the Court to the fact that nowhere in the opinion of said Court denying said motion for new trial was said right accorded to said plaintiff and petitioner, but the contrary.

And be it further remembered that each and all of the foregoing matters were then and there duly called to the attention of said Court; but notwithstanding the same, said Court sustained said objection of said defendant, and disallowed and rejected said exception No. 48; to which said ruling of said Court, said plaintiff and petitioner then and there duly excepted, and now assigns the same as error. (Exception No. 2.)

And be it further remembered that said plaintiff and petitioner then and there duly applied to said Court for time within which to prepare, present and file its bill of exceptions herein to said orders of said Court; and said Court then and there allowed said time; and said plaintiff and petitioner now, within said time, presents and tenders this, its bill of exceptions to said orders of said Court, to said Court; and in order that said exceptions may be preserved and perpetuated, and in furtherance of justice and that right may be done, and that the rulings here complained of may be presented to the Appellate Court for its opinion and decision, said plaintiff and petitioner now presents the foregoing as its bill of exceptions herein, and prays that the same may be settled, approved and allowed, and signed and certified as provided by law.

Dated, Honolulu, Hawaii, June 30th, 1902.

THE UNITED STATES OF AMERICA,
Plaintiff and Petitioner.
R. W. BRECKONS,
United States Attorney, and
J. J. DUNNE,
Assistant United States Attorney, Attorneys for Plaintiff and Petitioner.

Order Settling and Certifying Bill of Exceptions.

The foregoing bill of exceptions having been brought on regularly before the above-entitled court on the —— day of June, 1902, upon the application of the above-named plaintiff and petitioner for the settlement and certification thereof:

Now, therefore, on motion of R. W. Breckons, United States Attorney for said District, and J. J. Dunne, Assistant United States Attorney for said District, it is hereby ordered that the foregoing bill of exceptions heretofore filed by said plaintiff and petitioner in this cause, as the same now stands, be, and the same is hereby, settled, approved and allowed as a true bill of exceptions herein, and that the same, as so settled, allowed and approved, be now and here certified accordingly by the undersigned, the Judge of said court presiding herein, and who presided in said cause since its commencement, and who made the order to which said bill of exceptions is directed; and that said bill of exceptions,

when so certified to be filed by the clerk of said Court.

Dated, Honolulu, Hawaii, June ——, 1902.

——————,

Judge of said Court.

[Endorsed]: Title of Court and Cause. Filed June 30, 1902, at 1 o'clock, and 40 minutes P. M. W. B. Maling, Clerk. By Frank L. Hatch, Deputy Clerk. Received a copy this June 30, 1902. Hatch & Silliman and Fred W. Milverton, Counsel for Defendants.

United States of America, }
District of Hawaii. }

In the District Court of the United States, in and for the Territory of Hawaii.

UNITED STATES OF AMERICA,

Plaintiff and Petitioner,

vs.

ESTATE OF BERNICE PAUAHI BISHOP, Deceased; and JOSEPH O. CARTER, WILLIAM F. ALLEN, WILLIAM O. SMITH, SAMUEL M. DAMON, and ALFRED W. CARTER, Trustees Under the Will of Bernice Pauahi Bishop, Deceased, and of the Estate of said Bernice Pauahi Bishop, Deceased; and OAHU RAILWAY AND LAND COMPANY (a Corporation); and THE DOWSETT COMPANY, LIMITED (a Corporation); and HONOLULU PLANTATION COMPANY (a Corporation); and CHOW AH FO; and JOHN II ESTATE, LIMITED (a Corporation); and WILLIAM

G. IRWIN; and OAHU SUGAR COMPANY, LIMITED (a Corporation); and BISHOP AND COMPANY (a Copartnership),

Defendants and Respondents.

Notice of Presentation.

To Honolulu Plantation Company, a Corporation, One of the Above-named Defendants and Respondents, and to Its Attorneys:

You and each of you will please take notice hereby that on Tuesday, July 22d, 1902, we shall present to said Court the petition for writ of error herein and assignment of errors herein, and shall move said Court to allow said writ of error and to direct the issuance of the same, and of the citation herein. Copies of said petition for writ of error and of the assignment of errors herein are made a part of this notice, attached hereto and served herewith.

Dated, Honolulu, Hawaii, July 21st, 1902.

THE UNITED STATES OF AMERICA,

By R. W. BRECKONS,

United States Attorney in and for said District, and

J. J. DUNNE,

Assistant United States Attorney for said District.

Due service of the foregoing notice, and receipt of copies of the various papers therein referred to, are hereby admitted this 21st day of July, 1902.

HONOLULU PLANTATION COMPANY (a Corporation),

By HATCH & SILLIMAN,

Its Attorneys.

[Endorsed]: Title of Court and Cause. Notice of Presentation. Filed July 21st, 1902. W. B. Maling, Clerk. By Frank L. Hatch, Deputy Clerk.

United States of America, }
District of Hawaii. } ss.

In the District Court of the United States, in and for the Territory of Hawaii.

THE UNITED STATES OF AMERICA,

Plaintiff and Petitioner,

vs.

ESTATE OF BERNICE PAUAHI BISHOP, Deceased; and JOSEPH O. CARTER, WILLIAM F. ALLEN, WILLIAM O. SMITH, SAMUEL M. DAMON, and ALFRED W. CARTER, Trustees Under the Will of Bernice Pauahi Bishop, Deceased, and of the Estate of said Bernice Pauahi Bishop, Deceased; and OAHU RAILWAY AND LAND COMPANY (a Corporation); and THE DOWSETT COMPANY, LIMITED (a Corporation); and HONOLULU SUGAR COMPANY (a Corporation); and HONOLULU PLANTATION COMPANY (a Corporation); and CHOW AH FO; and JOHN II ESTATE, LIMITED (a Corporation); and WILLIAM G. IRWIN; and OAHU SUGAR COMPANY, LIMITED (a Corporation); and BISHOP AND COMPANY (a Copartnership),

Defendants and Respondents.

Supplemental Notice of Presentation.

To Honolulu Plantation Company, a Corporation, One of the Above-named Defendants and Respondents, and to Its Attorneys:

You and each of you will please take notice hereby that inasmuch as, on this July 21st, 1902, said Court adjourned until Friday, July 25th, 1902, the undersigned, by reason of said adjournment will not present to said Court until said Friday, July 25th, 1902, the petition for writ of error and assignment of errors herein; and that, on said Friday, July 25th, 1902, the undersigned will move said Court to allow said writ of error, and to direct the issuance of the same, and of the citation herein. This notice is in addition and supplementary to the notice heretofore, on this July 21st, 1902, served upon you.

Dated, Honolulu, Hawaii, July 21st, 1902.

THE UNITED STATES OF AMERICA.

By R. W. BRECKONS,

United States Attorney, in and for said District, and

J. J. DUNNE,

Assistant United States Attorney for said District.

Due service of the foregoing notice, and receipt of a copy thereof are hereby admitted this 21st day of July, 1902.

HONOLULU PLANTATION COMPANY (a Corporation).

By HATCH & SILLIMAN and

FRED W. MILVERTON,

Its Attorneys.

[Endorsed]: Title of Court and Cause. Supplemental Notice of Presentation. Filed July 21st, 1902. W. B Maling, Clerk.

United States of America,
District of Hawaii. }

In the District Court of the United States, in and for the Territory of Hawaii.

THE UNITED STATES OF AMERICA,

Plaintiff and Petitioner,

vs.

ESTATE OF BERNICE PAUAHI BISHOP, Deceased; and JOSEPH O. CARTER, WILLIAM F. ALLEN, WILLIAM O. SMITH, SAMUEL M. DAMON, and ALFRED W. CARTER, Trustees Under the Will of Bernice Pauahi Bishop, Deceased, and of the Estate of said Bernice Pauahi Bishop, Deceased; and OAHU RAILWAY AND LAND COMPANY (a Corporation); and THE DOWSETT COMPANY, LIMITED (a Corporation); and HONOLULU SUGAR COMPANY (a Corporation); and HONOLULU PLANTATION COMPANY (a Corporation); and CHOW AH FO; and JOHN II ESTATE, LIMITED (a Corporation); and WILLIAM G. IRWIN; and OAHU SUGAR COMPANY, LIMITED (a Corporation); and BISHOP AND COMPANY (a Copartnership),

Defendants and Respondents.

Petition for Writ of Error.

To the Honorable MORRIS M. ESTEE, Judge of the Above-entitled Court and Presiding Therein:

The above-named plaintiff and petitioner in the above-entitled cause, conceiving itself aggrieved by the final judgment, given, made and entered by the above-named

court, in the above-entitled cause, upon the issues therein joined between said plaintiff and petitioner and the above-named Honolulu Plantation Company, a corporation, one of the above-named defendants and respondents, under date of May 31st, A. D. 1902, said judgment being now on file in said cause and court, does hereby petition the above-entitled court for an order allowing said plaintiff and petitioner to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, from said judgment, and from the whole thereof, for the reasons set forth in the assignment of errors which is filed herewith, under and pursuant to the laws of the United States in that behalf made and provided; and it prays that this its petition for its said writ of error may be allowed, and that a transcript of the record, proceedings and papers upon which said judgment was given, made and entered, as aforesaid, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California.

Dated, Honolulu, Hawaii, July 17, 1902.

THE UNITED STATES OF AMERICA,
Plaintiff and Petitioner.
By ROB'T W. BRECKONS,
United States Attorney, and
J. J. DUNNE,
Assistant United States Attorney, Counsel for said Plaintiff and Petitioner.

[Endorsed]: Title of Court and Cause. Petition for Writ of Error. Filed July 21, 1902. W. B. Maling, Clerk.

District of Hawaii.
United States of America, }

In the District Court of the United States, in and for the District of Hawaii.

THE UNITED STATES OF AMERICA,

Plaintiff and Petitioner,

vs.

ESTATE OF BERNICE PAUAHI BISHOP, Deceased; and JOSEPH O. CARTER, WILLIAM F. ALLEN, WILLIAM O. SMITH, SAMUEL M. DAMON and ALFRED W. CARTER, Trustees Under the Will of Bernice Pauahi Bishop, Deceased; and of the Estate of said Bernice Pauahi Bishop, Deceased; and OAHU RAILWAY AND LAND COMPANY (a Corporation); and DOWSETT COMPANY, LIMITED (a Corporation); and HONOLULU SUGAR COMPANY (a Corporation); and HONOLULU PLANTATION COMPANY(a Corporation); and CHOW AH FO; and JOHN II ESTATE, LIMITED (a Corporation); and WILLIAM G. IRWIN, and OAHU SUGAR COMPANY, LIMITED (a Corporation); and BISHOP AND COMPANY (a Copartnership),

Defendants and Respondents.

Assignment of Errors.

HONOLULU PLANTATION COMPANY CASE.

Now, comes the above-named plaintiff and petitioner and makes and files the following assignment of errors upon which it will rely in the prosecution of its writ of

error in the above-entitled cause, as against Honolulu Plantation Company, a corporation, one of the above-named defendants and respondents:

1.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness, U. S. G. White: "Now, do you know whether there is a mill belonging to the plantation a mile from this land?" (Bill of Exceptions, Exception No. 2.)

And in this behalf, this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Now, do you know whether there is a mill belonging to the plantation a mile above this land?

"Mr. DUNNE.—I object to that as not proper cross-examination, and upon the ground that it is going into some other land, other than this land, outside of this land, which we do not know anything about. The witness testified that there was no mill on this land on July 6th, 1901, and he was not asked as to any other land—purely the land in controversy on July 6th, 1901.

"The COURT.—It is not cross-examination, but the Court will allow the witness to answer the question. The objection is overruled.

"Mr. DUNNE.—We except. (Exception No. 2.) And said plaintiff and petitioner now assigns said ruling as error."

"The WITNESS.—A. I know of the Honolulu Plantation's mill."

2.

Said Court erred in overruling the objections of plain-

tiff and petitioner to the following question asked on cross-examination from the witness, U. S. G. White: "And that it stands now where it stood on the 6th of July, 1901?" (Bill of Exceptions, Exception No. 3.)

And in this behalf, this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. And that it stands now here it stood on the 6th of July, 1901?

"Mr. DUNNE.—I object to that. We are not trying to condemn any of this land, and I object to the introduction on cross-examination, of this matter. He testified that here was no mill on this land, the land involved in this case, as it stood on July 6th, 1901. He said nothing about any other land. This is objected to as irrelevant and immaterial, and not cross-examination or pertinent to any matter testified to by the witness on the direct examination.

"The COURT.—Now, you can answer yes or no, and then explain just as you like—that is, if you want to, without regard to either counsel.

"Mr. DUNNE.—We except. (Exception No. 3.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. Yes, sir."

3.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness, U. S. G. White: "What was the size, Captain, of that mill?" (Bill of Exceptions, Exception No. 4.)

And in this behalf, this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. What was the size, Captain, of that mill?

"Mr. DUNNE.—That is objected to as immaterial, irrelevant and not cross-examination. I asked nothing about that mill. It is lugging in here entirely new matter to which no reference was made on the direct examination it seeking in the midst of a cross-examination to prove their case.

"The COURT.—Let him answer.

"Mr. DUNNE.—We except. (Exception No. 4.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. It is a large mill."

4.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness, U. S. G. White: "How far is this Halawa Valley that you have testified about in your first answer that I asked in regard to it from the land in question—the nearest portion to the land in question?" (Bill of Exceptions, Exception No. 5.)

And in this behalf, this assignment of errors now quotes the full substance of the evidence so admitted.

"Q. How far is this Halawa Valley that you have testified about in your first answer that I asked in regard to it from the land in question—the nearest portion to the land in question?

"Mr. DUNNE.—I object to that on the ground that it is wholly immaterial and not proper cross-examination, and not addressed to any subject matter to which the

witness' attention was called on the examination in chief; and upon the additional ground that he might as well be asked how far Paris is from this piece of land.

"The COURT.—That might be, but the Court will allow him to answer how far Halawa Valley is from this land.

"Mr. DUNNE.—We except. (Exception No. 5.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. I should say about a mile and a half, or a mile and a quarter—that is, by the road. I do not know, only approximately over how much country down there adjoining this land, the Honolulu Plantation Company's property extends; approximately, I should say that it extends over 5,000 or 6,000 acres, and includes the land surrounding this land. I think Halawa Valley is included in the Honolulu plantation property. I pass through it."

5.

Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked on cross-examination from the witness, J. W. Pratt: "Now, Mr. Pratt, how is this return made up—what kind of a return is this under the law?" (Bill of Exceptions, Exception No. 6.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted.

"Q. Now, Mr. Pratt, how is this return made up—what kind of a return is this under the law?

"Mr. DUNNE.—I object to that on the ground that it is a double question.

"Mr. SILLIMAN.—I will divide it.

"The COURT.—Let us hear what Mr. Pratt says.

"Mr. DUNNE.—We except. (Exception No. 6.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—It is made under the head, aggregate value of plantations. It is under that head—a business for profit."

6.

Said Court erred in overruling the objections of plaintiff and petitioner to the following questions asked on cross-examination from the witness, F. K. Archer: "Now, Mr. Archer, do you know what that land is capable of yielding in sugar?" (Bill of Exceptions, Exception No. 7.)

And in this behalf, this assignment of errors now quotes the full substance of the evidence so admitted.

"Q. Now, Mr. Archer, do you know what that land is capable of yielding in sugar?

"Mr. DUNNE.—I object to that on the ground that it is not proper cross-examination, it appearing that no crop has ever been raised there.

"The COURT.—Answer the question. The objection is overruled.

"Mr. DUNNE.—We except. (Exception No. 7.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—Where it is good land, it will yield 9 or 10 tons per acre in cane; this land is good for cane, I say two feet deep dirt, where the dirt is 2 feet deep: that is good land. A portion of this land is waste and rocky—in fact, lava slabs. I mean to say that land that

could be plowed, some land might be a foot deep, it could be planted with cane all right to 18 or 20 or 24 inches deep, is all right, is all good land. I have gone over that land. I know the depth of soil upon it. Assuming that it is over 30 inches deep at the upper end and along the dividing line between that taken by the Government and Queen Emma's Estate line on the other side, and running from that down to nothing along the seashore—there is a strip along the seashore that is not arable; it ran from 30 inches at the Queen Emma line and nothing at the seashore line—I think about three hundred acres of that portion towards the seashore is arable, could be used, or what would you call good land."

7.

Said Court erred in denying to said plaintiff and petitioner an opportunity to state its objections to the following question asked on cross-examination from the witness, F. K. Acher: "Do you know whether the Honolulu Plantation Company had on the 6th of July, 1901, a water supply that was immediately available to this land in question"? (Bill of Exceptions, Exception No. 8.)

And in this behalf this assignment of errors now quotes the full substance of the aforesaid action of said Court:

"Mr. SILLIMAN.—Do you know whether the Honolulu Plantation Company had on the 6th day of July, 1901, a water supply that was immediately available to this land in question?

"Mr. DUNNE.—I object to that question on the ground—

"The COURT.—Ask the question.

"Mr. DUNNE.—We except. (Exception No. 8.) And

said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—Yes, sir."

8.

Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked on cross-examination from the witness, F. K. Archer. "What was the extent of that water supply?" (Bill of Exceptions. Exception No. 9.)

And in this behalf, this assignment of errors now quotes the full substance of the evidence so admitted.

"Mr. SILLIMAN.—What was the extent of that water supply?

"Mr. DUNNE.—I make the same objection, that we are getitng outside of the land in controversy.

"Mr. DUNNE.—We except. (Exception No. 9.) And said plaintiff and petitioner now assigns the said ruling as error.

"The WITNESS.—I don't know exactly how much, how many gallons of water would be pumped by those two pumps at Halawa. There is one big pump; approximately, about 10,000,000 gallons, more or less, and the other pump 7, more or less, in the other pump."

9.

Said Court erred in denying the motion of plaintiff and petitioner to strike out the answer and testimony given by said witness, F. K. Archer, on cross-examination, in response to the question: "What was the extent of that water supply?" (Bill of Exceptions. Exception No. 10.)

And in this behalf this assignment of errors now

quotes the full substance of the evidence so refused to be stricken out:

"The WITNESS.—I don't know exactly how much, how many gallons of water would be pumped by those two pumps at Halawa. There is one big pump; approximately, about 10,0000,000 gallons, more or less, and the other pump 7, more or less, on the other pump.

"Mr. DUNNE.—I move to strike out this testimony on the ground that it appears from his answer that this alleged water supply, which is not on the land, but so called 'immediately available'—whatever that means—springs from somewhere in the Halawa Valley; it goes back to the old thing that your Honor has ruled out heretofore—trying to fix the value of this land by something else.

"The COURT.—Immediately available to this land, that is the question, and that is what the Court ruled on. If it is immediately available to this land, they can prove it.

"Mr. DUNNE.—We except. (Exception No. 10.) And said plaintiff and petitioner now assigns said ruling as error.

"The COURT.—I do not think it is cross-examination: No, I do not."

10.

Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked on cross-examination from the witness, F. K. Archer: "Do you know whether there is a flowing stream immediately available for use upon this land within the lines of the Honolulu Plantation Company?" (Bill of Exceptions, Exception No. 11.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Mr. SILLIMAN.—Q. Do you know whether there is a flowing stream immediately available for use upon this land within the lines of the Honolulu Plantation Company?

"Mr. DUNNE.—I object to that upon the grounds heretofore stated and as going outside of the land in controversy.

"The COURT.—If it is immediately available to this land, the witness can answer the question.

"Mr. DUNNE.—We except. (Exception No. 11.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—I do."

11.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness, F. K. Archer: "Well, now, assuming that the land is in the same condition, or substantially in the same condition on the 6th of July, 1901, and considering its situation, and the uses it might be put to, and the improvements put upon it, the plowing that has been done, the clearing that has been done, all of its usefulness, the whole property of the Honolulu Plantation Company, that is available for use in connection with that land—assuming those things, what do you say as to the value of the leasehold interest?" (Bill of Exceptions, Exception No. 12.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Well, now, assuming that the land is in the same condition or substantially in the same condition on the 6th day of July, 1901, and considering its situation, and the uses it might be put to, and the improvements put upon it the plowing that has been done, the clearing that has been done, all of its usefulness, the whole property of the Honolulu Plantation Company that is available for use, in connection with that land, assuming those things, what do you say as to the value of the leasehold interest?

"Mr. DUNNE.—I object to that question on the ground that it is incompetent, an incompetent hypothetical question; it involves matters not established by any evidence in this case.

"The COURT.—Answer the question.

"Mr. DUNNE.—We except. (Exception No. 12.) And said plaintiff and petitioner now assigns said ruling as error.

"A. I think about one hundred thousand dollars. In estimating the value of the defendant's interests in this leasehold, I think I took into consideration the value of the use of the buildings on the land."

12.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness F. W. Thrum: "Now, Mr. Thrum, how do you know what this land will produce, or whether it is good cane land or not?" (Bill of Exceptions, Exception No. 13.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Now, Mr. Thrum, how do you know what this land will produce, or whether it is good cane land or not?

"Mr. DUNNE.—I object to that as wholly immaterial and purely speculative. I object to the question on the ground it is a double-headed question. I have no objection to the latter part, as to how he knows that it is cane land. I object to the first half, not the latter half.

"The COURT.—Answer the question. The objection is overruled.

"Mr. DUNNE.—We except. (Exception No. 13.) And said plaintiff and petitioner now assigns said ruling as error.

"A. I have not testified that it was good cane land. It is not good cane land. I know the quality of this land from personal examination of it."

13.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness F. W. Thrum: "Do you know the yield of the Halawa Valley?" (Bill of Exceptions, Exception No. 14.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted.

"Q. Do you know the yield of the Halawa Valley?

"Mr. DUNNE.—I object to the yield of the Halawa Valley, on the ground that the yield of the Halawa Valley is wholly immaterial, and it not appearing that this land ever had any yield.

"The COURT.—The Court will give a pretty wide latitude in the examination of witnesses in relation to their qualifications to testify as to the values.

"Mr. DUNNE.—We except. (Exception No. 14.) And said plaintiff and petitioner now assigns said ruling as error.

"A. I do not."

14.

Said Court erred in sustaining the objections of said defendants, said Honolulu Plantation Company, to the following questions asked by said plaintiff and petitioner from the witness F. W. Thrum: "If a leasehold interest of forty years on that particular piece of land, seven years of which was fully paid up, the balance of which was held at three and one-half per cent of the sugar produced, provided it did not fall below $4,000 per annum for the entire tract of land, including other lands, the first lease including 2,900 acres, and the second 2,122 acres, if such a leasehold were offered for sale in the public market, what would you be willing to pay per acre for it?" (Bill of Exceptions, Exception No. 15.)

And in this behalf this assignment of errors now quotes the full substance of the evidence expected:

"A. Not over $20.00 per acre."

15.

Said Court erred in granting the motion of said defendant, said Honolulu Plantation Company, to strike out from the testimony of the witness, F. W. Thrum, the following passage: "I stated that part of my occupation on the Ewa plantation was the selection of cane land. The first case was in 1895, when Mr. Lowery was the manager, and many acres were valuable for the cultivation of cane below field 19—that was then the extent of the plantation in that direction. I was sent out there, and started field 19, and I cut lines through the algeroba,

the glue and the lantana, and was to report the land that I considered valuable for sugar cane, and after two or three weeks later I got around this tract, field 19, and reported to him the number of acres that I considered valuable for sugar cane in that vicinity. My report was accepted." (Bill of Exceptions, Exception No. 16.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so stricken out.

"The WITNESS (To Mr. Dunne.)—I stated that part of my occupation on the Ewa plantation was the selection of cane land. The first case was in 1895, when Mr. Lowery was the manager, and many acres were valuable for the cultivation of cane below field 19—that was then the extent of the plantation in that direction. I was sent out there, and started at field 19, and I cut lines through the algeroba, the glue and the lantana, and was to report the land that I considered valuable for sugar cane, and after two or three weeks later I had got around this tract, field 19, and reported to him the number of acres that I considered valuable for sugar cane in that vicinity. My report was accepted.

"Mr. SILLIMAN.—I move to strike it out on the ground that it is not proper redirect examination.

"The COURT.—I do not think it is material. Let it be stricken out.

"Mr. DUNNE.—We except. (Exception No. 16.) And said plaintiff and petitioner now assigns said ruling as error."

16.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on cross-examination from the witness, J. A. McCandless:

"What is the value set on that leasehold interest of 142 acres (referring to a certain tract of 142 acres on Ford Island, originally sought to be condemned in this action, but to which a discontinuance of the action was subsequently made and filed by plaintiff and petitioner and ordered by the Court)?" (Bill of Exceptions, Exception No. 17.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. What is the value set on that leasehold interest of 142 acres?

"Mr. DUNNE.—I object to this. The records of this court show that this entire matter was settled amicably between the Oahu Sugar Company and the Government. This is not proper cross-examination; it is not directed to any matter testified to by the witness in chief. It is not proper cross-examination; it has no materiality here.

"The COURT.—The Court will not rule out that testimony, but you can meet it, and you will have to meet it, if it is met at all, because the Court will not rule out any testimony that has a tendency to explain any facts that are introduced before the jury.

"Mr. DUNNE.—We except. (Exception No. 17.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. I see from that answer of the Oahu Sugar Company that they place a valuation of $200,000 on 142 acres on Ford Island that I have been testifying about. I do not know what the chemical analysis of the subsoil of Ford Island is. If you were to give me the chemical analysis of the subsoil, I do not think I would be able to understand it—everything."

17.

Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked on direct examination from the witness J. A. Low: "Just explain the nature of your duties, and the nature of your experience and the nature of your study on the subject (of the growth and manufacture of sugar)." (Bill of Exceptions, Exception No. 18.)

And in this behalf, this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Just explain the nature of your duties, and the nature of your experience, and the nature of your study on the subject.

"Mr. DUNNE.—I object to that question on the ground that it involves three separate and distinct questions.

"The COURT.—Let him answer them.

"Mr. DUNNE.—We except. (Exception No. 18.) And said plaintiff and petitioner now assigns the said ruling as error.

"A. In connection with my duties as manager of the plantation, was to direct the general work of the plantation, employ men, plant cane, harvest it, employ skilled men, men trained in the different branches of the work, civil engineering, mechanical engineering, cultivation, the agricultural portion of the work, see to the animals, the driving, the handling of horses and mules, bookkeepers and accountants, chemists, sugar-boilers, electricians, and men adapted to locomotive engineering. The Honolulu Sugar Compnay was organized in May, 1898, I think. It was a corporation organized for the purposes of cultivating and manufacturing sugar, selling the sugar produced from the land, purchasing land, leasing land, run-

ning a mercantile business, and running pieces of railroad and pipe-lines, etc. These lands are situated in the Ewa and Kona Districts, Island of Oahu. The plantation has about 5,000 acres, situated around and adjoining this land. I think that the total acreage, rocky places and waste land, is about 8,000 acres. I figured it up for the last trial. There are five thousand acres of cane land."

18.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on direct examination from the witness J. A. Low: "Why not (that is to say, why was not sugar grown on this land by the Honolulu Plantation Company)?" (Bill of Exceptions, Exception No. 19.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Why not?

"Mr. DUNNE.—I object, for the reasons why the sugar was not grown on the land as being wholly immaterial; it is the fact we deal with, not the reasons that he may have for this fact.

"The COURT.—Ask him the question.

"Mr. DUNNE.—We except. (Exception No. 19.) And said plaintiff and petitioner now assigns the said ruling as error.

"A. Because we are a new plantation, and have not been able to get there. All new plantations must start from the mill and work out; and we have done so."

19.

Said Court erred in denying the motion of plaintiff and petitioner to strike out the answer and testimony given

by the witness C. Bolte, on direct examination, in response to the question, "Now, considering the property sought to be condemned in the state in which you saw it on the day that you viewed it, that it was in substantially the same state on the 6th of July, 1901, considering its situation and the uses that might be made of it and to which it was adapted, and assuming that the plantation has a thirty-nine years' lease, seven years' rental of which has been paid, and the remaining thirty-two years is upon a basis of a crop payment—that is, three and a half per cent of the sugar produced—and the payment of the taxes, the lease including other land (there was a minimum rent on the other land which is not material), and assuming that there are 342 acres of cane land in the area sought to be condemned, what, in your opinion, was the value of the leasehold interest of that land on the 6th of July, 1901, to the Honolulu Plantation Company?" (Bill of Exceptions, Exception No. 20.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so refused to be stricken out:

"A. Four hundred and fifty thousand dollars."

20.

Said Court erred in denying the motion of plaintiff and petitioner to strike out the testimony of said witness, C. Bolte, given on direct examination, relative to the value of this leasehold to a particular individual, to the Honolulu Plantation Company. (Bill of Exceptions, Exception No. 21.)

And in this behalf this assignment of errors now

quotes the full substance of the evidence so refused to be stricken out:

"Q. Now, considering the property sought to be condemned in the state in which you saw it on the day that you viewed it, that it was in substantially the same state on the 6th of July, 1901, considering its situation and the uses that might be made of it, and to which it is adapted, and assuming that the plantation has a thirty-nine years' lease, seven years' rental of which has been paid, and the remaining thirty-two years is upon the basis of a crop-payment, that is, three and one-half per cent of the sugar produced, and the payment of the taxes, the lease including other land, there was a minimum rent upon the other land, which is not material, and assuming that there are 342 acres of cane land in the area sought to be condemned, what, in your opinion, was the value of the leasehold interests of that land on the 6th of July, 1901, to the Honolulu Plantation Company?

"A. Four hundred and fifty thousand dollars.

"Mr. DUNNE.—I move to strike out the testimony of this witness as to value of this leasehold to the Honolulu Plantation Company, on the ground that it is settled law that what this may be worth to the Honolulu Plantation Company is not a fair test of the market value.

"The COURT.—The Court will not strike it out.

"Mr. DUNNE.—We except. (Exception No. 20.) And said plaintiff and petitioner now assigns said ruling as error.

"Q. What was the market value?

"A. That is what I said. I have not made up my mind. I think it ought to be $250,000 or $300,000.

"The COURT.—Q. Is there any difference between the value and the market value?

"A. Yes, sir, the Honolulu Plantation; it might have a greater value to the Honolulu Plantation than to anyone else. If it were put in the market, there would be three buyers of this land—the Ewa, the Oahu and the Honolulu; but it has a distinct value to the Honolulu Plantation.

"Cross-Examination.

"Mr. DUNNE.—To save the right of the Government, I move to strike out the testimony of the witness relative to the value of this leasehold to a particular individual—to the Honolulu Plantation Company, on the ground that the compensation is the market value, and not the value which the property may or may not have to a particular individual.

"The COURT.—The Court will not strike it out.

"Mr. DUNNE.—We except. (Exception No. 21.) And said plaintiff and petitioner now assigns said ruling as error."

21.

Said Court erred in denying the motion of plaintiff and petitioner to strike out the answer and testimony of the witness, J. A. Low, during his direct examination, when resumed, in response to the question, "What was the value of the use of the buildings on that land for the remainder of your term of the lease?" (Bill of Exceptions, Exception No. 22.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so refused to be stricken out:

"The value of the use of the buildings on that land for the remainder of our term of the lease was $13,000, I believe; the buildings are worth that to this company, because I do not believe that there would be a vestige of the buildings left at the termination of the lease, forty years from now."

22.

Said Court erred in denying the motion of plaintiff and petitioner to strike out the testimony of the witness, J. A. Low, on direct examination, when resumed, relative to the nature and quality of the soil upon the land sought to be condemned, to the Honolulu Plantation Company. (Bill of Exceptions, Exception No. 23.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so refused to be stricken out:

"A. We have similar soil in the Halawa Valley that we have raised cane on.

"Mr. DUNNE.—I object to this comparison of outside soil; he was asked concerning this soil.

"The COURT.—He can go on if he will. Let us hear it.

"Mr. DUNNE.—We except. (Exception No. 23.) And said plaintiff and petitioner now assigns said ruling as error."

23.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked on direct examination from the witness J. A. Low: "What was its (the property sought to be condemned) value on the 6th of July, 1901?" (Bill of Exceptions, Exception No. 24.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Mr. SILLIMAN.—Q. What was its value on the 6th of July, 1901?

"A. To the Honolulu Plantation Company?

"Q. Yes, sir.

"Mr. DUNNE.—The same objection—not a proper test of market value.

"The COURT.—The same ruling.

"Mr. DUNNE.—We except. (Exception No. 24.) And said plaintiff and petitioner now assigns said ruling as error.

"A. Four hundred thousand dollars."

24.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company, from the said witness J. A. Low, during his direct examination, when resumed: "Mr. Low, that portion of the tax return read in evidence here, showing the statement under the heading 'Leasehold interest—return of real estate leases as per schedule "B," $50,000'—what have you to say in regard to it, Mr. Low, by way of explanation?" (Bill of Exceptions, Exception No. 25.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Mr. Low, that portion of the tax return read in evidence here showing the statement under the heading 'Leasehold interest—return of real estate leases as per schedule 'B,' $50,000,' what have you to say in regard to it, Mr. Low, by way of explanation?

"Mr. DUNNE.—I object to that; it is a mere ambiguous question—a sort of question that would permit almost any sort of an answer, hearsay or otherwise.

"The COURT.—Answer the question.

"Mr. DUNNE.—We except. (Exception No. 25.) And said plaintiff and petitioner now assigns said ruling as error.

"A. Fifty thousand dollars is a transcript of our books which show the cost of three rice plantations that were purchased, the leasehold interest in the three plantations which we purchased, an area of 113 acres of cane land."

25.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness W. R. Castle on direct examination: "What knowledge have you of the development of the plantation in that district (meaning the District of Ewa)?" (Bill of Exceptions, Exception No. 26.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. What knowledge have you of the development of the plantations in that district?

"Mr. DUNNE.—I object to that as entirely irrelevant and immaterial to any issue in this case—as to the development of other plantations in that District.

"The COURT.—Answer the question.

"Mr. DUNNE.—We except. (Exception No. 26.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—I have been identified with the plantations there—the Ewa plantation more particularly—and have know about the development of all of these plantations beginning with the Ewa and coming down to the Honolulu plantation. I have had connections with some of the lands of the Honolulu plantation, but not including this portion now in controversy —lands that I had occasion to make over to the Honolulu Plantation Company, not this particular land; but I am talking about sales to the Honolulu Plantation Company. I sold—

"Mr. DUNNE.—I object to any statement about any sales that he may have made, or his connection with any land except this land.

"The WITNESS.—I am speaking about this land.

"Mr. DUNNE.—I am addressing an objection to the Court.

"The COURT.—He can testify to any sales that he made connected with this land.

"Mr. DUNNE.—He has testified already that he had nothing to do with this land.

"The WITNESS.—Recently, I said.

"Mr. SILLIMAN.—In times past. I am not asking for the amount of sales or anything.

'The WITNESS.—I am still the administrator of the estate and trustee of the Williams heirs. The estate sold this land, this particular land as well as others, it was sold about 1880. The estate of Williams had a leasehold in common with Jim Castle, and it covered this land as well as the other land, and after some years I sold out the interest of the estate of Williams to James

I. Dowsett. I suppose conveyances are of record. I made the conveyance in shape and delivered it to Mr. Dowsett. I covered the District of Halawa from the sea to the mountains. My impression is that there were about two or four thousand acres included in this land."

26.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness W. R. Castle, on direct examination: "Now, Mr. Castle, considering the property sought to be condemned, the state which you saw it on the day that you viewed it, and assuming that it was substantially the same state on July 6th, 1901, and taking into consideration the situation of the land and all the uses that might be made of it; and assuming that the plantation has a thirty-nine years' lease, and that seven years' rental has been paid, and that the rental for thirty-two years is on the basis of three and one-half per cent of the sugar produced, and the payment of taxes (the lease covering other lands in addition to this), and for a minimum rental, and assuming that there are 342 acres of cane land of the land sought to be condemned, what in your opinion was the market value of that leasehold on the 6th of July, 1901?" (Bill of Exceptions, Exception No. 27.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Now, Mr. Castle, considering the property sought to be condemned, the state which you saw it on the day that you viewed it, and assuming that it was in substantially the same state on July 6th, 1901, and taking into consideration the situation of the land and

all the uses that might be made of it; and assuming that the plantation has a thirty-nine years' lease, and that seven years' rental has been paid, and that the rental for thirty-two years is on the basis of three and one-half per cent of the sugar produced, and the payment of taxes (the lease covering other lands in addition to this), and for a minimum rental, and assuming that there are 342 acres of cane land of the land sought to be condemned, what in your opinion was the market value of that leasehold on the 6th of July, 1901?

"Mr. DUNNE.—I object to the question as immaterial, irrelevant and incompetent, not justified by the evidence, and without foundation in this; that there is no evidence here that the witness does know what was the market value of such a leasehold as described in the question, on July 6th, 1901.

"The COURT.—Let him answer it.

"Mr. DUNNE.—We except. (Exception No. 27.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. I should judge the value to be about $250,000."

27.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by the said Honolulu Plantation Company from the witness W. W. Goodale on direct examination: "Now, Mr. Goodale, considering this land sought to be condemned, in the state in which you saw it on the day that you viewed it, and assume that it is in substantially the same state or was on the 6th of July last year, and

considering the situation of it, and the uses that might be made of the land and to which it was adapted, and assuming that the plantation had a thirty-nine years' lease, seven years' rental of which has been paid, the rental for thirty-two years is based upon three and one-half per cent of the sugar produced (the particular lease covers other land as well as this), has a minimum basis of rental and includes other land, and assume that there is 342 acres of cane land, what in your opinion is the market value of the leasehold to the Honolulu Plantation Company of the land sought to be condemned on the 6th of July last?" (Bill of Exceptions, Exception No. 28.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted.

"Q. Now, Mr. Goodale, considering this land sought to be condemned, in the state in which you saw it on the day that you viewed it, and assume that it is in substantially the same state or was on the 6th of July last year, and considering the situation of it, and the uses that might be made of the land and to which it was adapted, and assuming that the plantation had a thirty-nine years' lease, seven years' rental of which has been paid, the rental for thirty-two years is based upon three and one-half per cent of the sugar produced (the particular lease covers other land as well as this), has a minimum basis of rental and includes other land, and assume that there is three hundred and forty-two acres of cane land, what in your opinion is the market value of the leasehold to the Honolulu Plantation Company of the land sought to be condemned on the 6th of July last?

"Mr. DUNNE.—Objected to as immaterial, irrelevant

and incompetent, without foundation in this, that it is not a fair statement of the evidence, without foundation in this, that it does not appear that the witness does know the market value of such property on the 6th of July, 1901.

"The COURT.—The objection is overruled.

"Mr. DUNNE.—We except. (Exception No. 28.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. Three hundred thousand dollars."

28.

Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness G. F. Renton on direct examination: "Now, considering this property sought to be condemned in the state that you saw it on the day that you visited it, and assuming that it was in substantially the same situation on the 6th of July, 1901, and assuming that there is a lease for thirty-nine years, seven years of which has been paid up, and the rental for thirty-two years is on the basis of three and one-half per cent of the sugar produced (the lease covers other land as well as this), has a minimum rental which, however, has no materiality to the question, the payment of taxes, and considering all of the uses and purposes to be made of the land, and the situation in which it exists on that day, and assuming further that there was 342 acres of cane land within the area sought to be condemned, what in your opinion was the market value of the leasehold interest on the Honolulu Plantation Company on the 6th day of

July last year?" (Bill of Exceptions, Exception No. 29.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Now, considering the property sought to be condemned in the state that you saw it on the day that you visited it, and assuming that it was in substantially the same situation on the 6th of July, 1901, and assuming that there is a lease for thirty-nine years, seven years of which has been paid up, and the rental for thirty-two years is on the basis of three and one-half of the sugar produced, (the lease covers other land as well as this), has a minimum rental which, however, has no materiality to the question, the payment of taxes; and considering all of the uses and purposes to be made of the land, and the situation in which it exists on that day, and assuming further that there was 342 acres of cane land within the area sought to be condemned, what in your opinion was the market value of the leasehold interest of the Honolulu Plantation Company on the 6th day of July last year?

"Mr. DUNNE.—Objected to as immaterial, irrelevant and incompetent, and not an accurate and faithful statement of the evidence, and without foundation in this, that it does not appear that the witness knows what the market value of the leasehold was at the time mentioned.

"The COURT.—The Court will overrule the objection.

"Mr. DUNNE.—We except. (Exception No. 29.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. I should estimate it at $250,-000 as the value of the land for the leasehold."

29.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness F. Meyer on direct examination: "Well, considering the property sought to be condemned, as to its location and all the uses that could be made of it, and assuming that it is in substantially the same situation as it was on the 6th day of July, 1901, and assuming that there is a lease of thirty-nine years, seven years of which are paid up, and thirty-two years of which are on the basis of three and one-half per cent of the sugar produced, together with the payment of taxes, and also saying that there is a minimum rental; that this three and one-half per cent should not be less than $4,000 a year; and assuming that there are 342 acres of cane land in the area sought to be condemned, what in your opinion was the market value of that leasehold interest on the 6th of July, 1901?" (Bill of Exceptions, Exception No. 30.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Well, considering the property sought to be condemned, as to its location, and all the uses that could be made of it, and assuming that it is substantially in the same situation as it was on the 6th day of July, 1901, and assuming that there is a lease of thirty-nine years, seven years of which are paid up, and thirty-two years of which are on the basis of three and one-half per cent of the sugar produced, together with the payment of taxes, and also saying that there is a minimum rental;

that this three and one-half per cent should not be less than $4,000 a year; and assuming also that there are 342 acres of cane land in the area sought to be condemned, what in your opinion was the market value of that leasehold interest on the 6th of July, 1901?

"Mr. DUNNE.—Objected to as incompetent, irrelevant and immaterial, and upon the ground that it is not a fair and accurate statement and is not a competent hypothetical question; and without foundation in this, that it does not appear that the witness knows the market value on the 6th of July, 1901.

"The COURT.—Answer the question. Objection overruled.

"Mr. DUNNE.—We except. (Exception No. 30.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. Three hundred thousand dollars."

30.

Said Court erred in overruling the objections of plaintiff and petitioner to the following questions asked by said Honolulu Plantation Company from the witness A. Ahrens on direct examination: "Now, considering the property sought to be condemned, and the situation in which you saw it on the day that you viewed—that is, in October; and assuming that it was in substantially the same situation that it was on July 6th, 1901; and after taking into consideration the use that might be made, the purpose to which it is adapted; and assuming that there is a thirty-nine years' lease, seven years of which are paid up, and the balance of the term is upon the basis of three and one-half per cent of the crop,

and I will also state for your information that there is a minimum basis, which includes other land, now, assuming that there was 342 acres of cane land included within the 561 acres, what in your opinion was the market value of the leasehold interest on the 6th of July last?" (Bill of Exceptions No. 31.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Now, considering the property sought to be condemned, and the situation in which you saw it on the day that you viewed—that is, in October—and assuming that it was in substantially the same situation that it was on July 6th, 1901, and after taking into consideration the use that might be made, the purpose to which it is adapted, and assuming that there is a thirty-nine years' lease, seven years' of which are paid up, and the balance of the term is upon the basis of a three and one-half per cent of the crop, and I will also state for your information that there is a minimum basis which includes other land, now, assuming that there was 342 acres of cane land included within the 561 acres, what in your opinion was the market value of the leasehold interest on the 6th of July last?

"Mr. DUNNE.—I object to the question as irrelevant, and incompetent, and not a proper and accurate statement of the testimony; and without foundation, in that it does not appear that the witness knows what the market value of such a leasehold was on July 6th, 1901.

"The COURT.—The Court will make the same ruling and allow the testimony in.

"Mr. DUNNE.—We except. Exception No. 31.) And

said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. Two hundred and seventy-five thousand dollars."

31.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness, J. T. Crawley, on direct examination: "What do you know about the productive capacity of the soil of this land?" (Bill of Exceptions, Exception No. 32.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. What do you know about the productive capacity of the soil of this land?

"Mr. DUNNE.—I object to the question as immaterial, irrelevant and incompetent, and calling for a mere speculation and without foundation upon which any reasonable person can base an opinion.

"The COURT.—The objection is overruled.

"Mr. DUNNE.—We except. (Exception No. 32.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. The soil is very well adapted to the growing of cane; it is good soil. The chemical composition of it is good and compares favorably with other soil in the vicinity that is raising good crops of sugar."

32.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question by said Honolulu Plantation Company from the witness, J. F. Mor-

gan, on direct examination: "Now, Mr. Morgan, taking into consideration the property sought to be condemned and its location and situation, and what can be done with the situation as you saw it on the day that you viewed it, the uses and purposes that the land can be put to, and assuming that the Honolulu Plantation Company has a thirty-nine years' lease, seven years' of which are paid up, and the balance of the term is based upon three and one-half per cent of the sugar produced from the land, the lease also covering other land, having a rental basis, and assuming that there was 342 acres of cane land upon the land sought to be condemned, what would you say was the market value of that leasehold interest on the 6th of July, 1901?" (Bill of Exceptions, Exception No. 33.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Now, Mr. Morgan, taking into consideration the property sought to be condemned and its location and situation, and what can be done with the situation as you saw it on the day that you viewed it, the uses and purposes that the land can be put to; and assuming that the Honolulu Plantation Company has a thirty-nine years' lease, seven years' of which were paid up and the balance of the term is based upon three and one-half per cent of the sugar produced from the land, the lease also covering other land, having a rental basis; and assuming that there was 342 acres of cane land upon the land sought to be condemned, what would you say was the market value of that leasehold interest on the 6th of July, 1901?

"Mr. DUNNE.—I object to the question as irrelevant

and incompetent, and not a proper or accurate statement of the evidence; and without foundation in this, that it does not appear that the witness does know what the going market value was on July 6th, 1901.

"The COURT.—Let the witness answer.

"Mr. DUNNE.—I note an exception. (Exception No. 33.) And said plaintiff and petitioner now asigns said ruling as error.

"The WITNESS.—I put an estimation on the value of about one hundred and seventy-five thousand dollars."

33.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the said witness. J. F. Morgan on redirect examination: "How many mills are there in the vicinity of this land?" (Bill of Exceptions, Exception No. 34.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Mr. SILLIMAN.—Q. How many mills are there in the vicinity of this land?

"Mr. DUNNE.—I object to that as irrelevant, incompetent, immaterial, and not proper redirect examination.

"The COURT.—Ask the question.

"Mr. DUNNE.—We except. (Exception No. 34.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. There is the Honolulu Plantation Company mill on right adjacent land to this; the Oahu mill a little further on; then comes the Ewa and the Waialua. I cannot say positively how far the Hono-

lulu mill is from this place, but it looks to me it was within, I should say, about two miles. I do not know how far away the Oahu mill is."

34.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness, L. A. Thurston, on direct examination: "Now, considering the property sought to be condemned, Mr. Thurston, in the state in which you saw it on the day that you visited it last, and assuming that it was in substantially the same state and condition on the 6th of July, 1901, and taking into consideration the location of the land and of the uses to which it might be put, and to which it was adapted; and assuming the plantation has thirty-nine years' lease, seven years' rental of which is paid up, and the rental for thirty-two years thereof is on a basis of three and one-half per cent of the sugar produced, and the payment of taxes. (I will say that the leasehold covers other land, and has a minimum rental of $4,000, covering practically 2,000 acres); and assuming that there was 342 acres of cane land in the area sought to be condemned, what is your opinion of the market value of that leasehold interest on the 6th of July, 1901?" (Bill of Exceptions, Exception No. 35.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Now, considering the property sought to be condemned, Mr. Thurston, in the state in which you saw it on the day that you visited it last, and assuming that it was substantially the same state and condition on the

6th of July, 1901, and taking into consideration the location of the land, and of the uses to which it might be put, and to which it was adapted, and assuming the plantation has thirty-nine years' lease, seven years' rental of which is paid up, and the rental of thirty-two years thereof is on a basis thereof of three and one-half per cent of the sugar produced, and the payment of taxes (I will say that the leasehold covers other land, and has a minimum rental of $4,000 covering practically 2,000 acres); and assuming that there was 342 acres of cane land in the area sought to be condemned, what is your opinion of the market value of that leasehold interest on the 6th of July, 1901?

"Mr. DUNNE.—I object to that as irrelevant and incompetent, and not a faithful and accurate statement of the evidence, and without any foundation in this, that it does not appear that the witness knows what the market value of this leasehold was on the 6th of July, 1901.

"The COURT.—Answer the question.

"Mr. DUNNE.—We except. (Exception No. 35.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. I consider that a conservative market value of that leasehold under the conditions which you stated would be between seven and eight hundred dollars per acre, for the 342 acres of cane land."

35.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness,

L. A. Thurston, on redirect examination: "What can you say as to the quality of the soil on the land sought to be condemned as to its producing any crop of sugar." (Bill of Exceptions, Exception No. 36.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Mr. SILLIMAN.—Q. What can you say as to the quality of the soil on the land sought to be condemned as to its producing any crop of sugar?

"Mr. DUNNE.—I object to that as irrelevant, immaterial and incompetent, and not proper redirect examination.

"The COURT.—Ask the question.

"Mr. DUNNE.—We except. (Exception No. 36.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—A. I consider it first-class cane land."

36.

Said Court erred in overruling the objections of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from the witness, J. R. Higby, on direct examination: "Are you able to state the value of the use of those buildings for the term of thirty-nine years?" (Bill of Exceptions, Exception No. 37.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Are you able to state the value of the use of those buildings for the term of thirty-nine years?

"Mr. DUNNE.—I object to that as irrelevant and in-

competent, and upon the further ground that it does not call for the market value, but calls merely for an individual or personal value.

"The COURT.—The objection is overruled.

"Mr. DUNNE.—We except. (Exception No. 37.) And said plaintiff and petitioner now assigns said ruling as error.

"The WITNESS.—If you assume that the buildings are valueless at the end of thirty-nine years—I should say that the life of those buildings would not be thirty-nine years—I should place the value of the use for the term of thirty-nine years at what they cost."

37.

Said Court erred in overruling the objection of plaintiff and petitioner to the following question asked by said Honolulu Plantation Company from said witness, J. R. Higby, on direct examination: "Assuming that their life will be finished, what is the value of those buildings?" (Bill of Exceptions, Exception No. 38.)

And in this behalf this assignment of errors now quotes the full substance of the evidence so admitted:

"Q. Assuming that their life will be finished, what is the value of those buildings?

"Mr. DUNNE.—The same objection as heretofore made. (Exception 37.)

"The COURT.—The objection is overruled.

"Mr. DUNNE.—We except. (Exception No. 38. And said plaintiff and petitioner now assigns said ruling as error.

"A. I have some notes that I made of the value of the buildings. I am not exactly able to state the value

without refreshing my recollection from those notes. The total value is about $11,000—a little more than $11,-000, not including the plumbing and pipes."

38.

Said Court erred in refusing to give to said jury the first instruction requested by said plaintiff and petitioner. (Bill of Exceptions, Exception No. 39.)

And in this behalf this assignment of errors now quotes said first instruction so refused:

"I instruct you that private property cannot be taken for public use without just compensation. These are the words of our fundamental law, the Federal constitution; and from them you will observe that the compensation spoken of must be 'just.' In this behalf I charge you that it is your duty to treat both sides of this case with equal fairness and impartiality, and to avoid giving to any one side any preferment or advantage denied to the other. In other words, when dealing with this matter of compensation, you are to remember that just compensation means compensation that is just both sides, just in regard to the public as well as to the individual. You are not, for instance, to place an unduly depreciative valuation upon this property because the Government desires it; nor should you place an exaggerated valuation on the property either because it is private property or because the Government may want it. Your province is to proceed and act throughout with even handed fairness and impartiality, treating both sides alike, and deciding disputed questions solely upon the

evidence received, and within the lines laid down by this charge."

39.

Said Court erred in refusing to give to said jury the second instruction requested by said plaintiff and petitioner. (Bill of Exceptions, Exception No. 40.)

And in this behalf this assignment of errors now quotes said second instruction so refused:

"I instruct you that whenever private property is taken for public purpose, the fair market value of the property at the time of the taking should be paid for it; and according to the statute of this territory, the actual value of the property at the date of the summons is designated as the measure of valuation of all property to be condemned; and I charge you that the date of the summons in this case is July 6th, 1901. It is to this date, therefore, that you are to look in fixing the value of the property involved in this case. You are to remember that the material matter for consideration is the actual condition of the property as it stood on that date. It is to this that you are limited; and beyond this you cannot go. The prospective or speculative value of the land from possible improvements or prospective uses, cannot be considered by you; the value must be actual, and not speculative or mere possible value, nor argumentative value. It is not, therefore, proper to consider how the property might be improved, or the cost of such improvements, nor can you consider what the probable value of the land would be if this or that im-

provement were placed upon it; nor can you consider the intention of the lessee to make such improvements. even though you should find any such intention to exist. In brief, you are to limit your consideration to the actual condition of this property as it actually stood on July 6th, 1901."

40.

Said Court erred in refusing to give to said jury the fourth instruction requested by said plaintiff and petitioner. (Bill of Exceptions, Exception No. 41.)

And in this behalf this assignment of errors now quotes said fourth instruction so refused:

"Some evidence has been introduced by the Government showing certain valuations, sworn to, and filed with the assessor, pursuant to the requirements of the territorial statute in that regard. Upon this subject I charge you that such sworn returns to the assessor are called by the law admissions against interest; and you may, therefore, and indeed it is your duty to do so, consider such sworn returns along with the other evidence in the case bearing upon the question of market value.

"In this connection, I charge you that the Government has introduced here a certain writing of the Honolulu Plantation Company, making an annual exhibit of its affairs, and showing the assets of the defendant on January 1st, 1901. I charge you that such writing and exhibit comes within the rule just stated concerning admissions against interest, and that it is your duty to consider such writing and exhibit in connection with the other evidence in the case bearing upon the question of market value."

41.

Said Court erred in refusing to give to said jury the fifth instruction requested by said plaintiff and petitioner. (Bill of Exceptions, Exception No. 42.)

And in this behalf this assignment of errors now quotes said fifth instruction so refused:

"You have been permitted to view the premises in question. The object of this view was to acquaint you with the physical condition and surroundings of the premises, and to enable you to better understand the evidence on the trial. The knowledge which you acquired by the view may be used by you in determining the weight of conflicting testimony respecting value and damage, but no further. Your final conclusion must rest on the evidence here adduced."

42.

Said Court erred in refusing to give to said jury the sixth instruction requested by said plaintiff and petitioner. (Bill of Exceptions, Exception No. 43.)

And in this behalf this assignment of errors now quotes the sixth instruction so refused:

"In cases of this character, much of the testimony consists in expressions of opinion touching the subject matter involved. It is your province to weigh the testimony of witnesses whose opinions have been given, by a reference to the whole situation of the property and its surroundings, and all the attendant circumstances, and by applying to it your own experience and general knowledge. The evidence of experts as to values and damages does not differ in principle from the evidence of experts upon other subjects. So far from laying aside their own

general knowledge and ideas, the jury may apply that knowledge and those ideas to the matters of fact in evidence, in determining the weight to be given to the opinion expressed. While the jury cannot act in any case upon particular facts material to its disposition resting in their private knowledge, but should be governed by the evidence adduced, they may and should judge of the weight and force of that evidence by their own general knowledge of the subject of inquiry; and while the law permits the opinions of those familiar with the subject to be given, such opinions are not to be blindly received, but are to be intelligently examined by the jury in the light of their own general knowledge, giving them force and control only to the extent that they are found to be reasonable. In other words, you are not bound by the opinions of experts, but you will take their testimony into consideration, along with all other evidence in the case, and award to it such value as in your judgment it deserves."

43.

Said Court erred in refusing to give to said jury the seventh instruction requested by said plaintiff and petitioner. (Bill of Exceptions, Exception No. 44.)

And in this behalf this assignment of errors now quotes the said seventh instruction so refused:

"In determining upon which side the preponderance of evidence is, you are not to be controlled by the mere number of witnesses produced, upon either side, but you should take into consideration the opportunities of the several witnesses for seeing or knowing the things about which they testified, their conduct and demeanor while testifying, their interest or lack of interest, if any, in the result of the suit, the probability or improbability of the

truth of their several statements in view of all of the other evidence adduced or circumstances proved on the trial, and from all the circumstances determine on which side is the weight or preponderance of the evidence. In dealing with the testimony, you must not forget by whom it was given, the motive of the particular witness, if any, the purpose by which he is actuated, the partisanship, if any, attributable to him. Indeed, any fact or circumstance by which his unbiased utterance of truth might be impeded or prevented, altogether, must receive your attention. Thus, you would not, as men of sense, so readily yield to the testimony of a witness whose partiality is known or observable, as you would have done had the same witness been wholly indifferent between the parties, and with no partisan motive to actuate him—no interest in the result of the trial other than the general interest which every good citizen ought to feel, that in this, as in all other trials, justice be done according to law."

44.

Said Court erred in refusing to give to said jury the eighth instruction requested by said plaintiff and petitioner. (Bill of Exceptions, Exception No. 45.)

And in this behalf this assignment of errors now quotes said eighth instruction so refused:

"At arriving at a verdict in this case, you are to give to the testimony such weight and effect as in your judgment it deserves; but you should not treat with such testimony arbitrarily or capriciously, nor should you limit your consideration to any isolated or fragmentary part thereof. On the contrary, you are to take into consideration all the evidence in the case, both direct and

circumstantial, together with all reasonable inferences to be drawn from that evidence."

45.

Said Court erred in refusing to give to said jury the ninth instruction requested by said plaintiff and petitioner. (Bill of Exceptions, Exception No. 46.)

And in this behalf this assignment of errors now quotes said ninth instruction so refused:

"In considering and deciding the facts in this case, I charge you that the property sought to be condemned herein is the leasehold interest of the Honolulu Plantation Company in and to 561.2 acres of land, and nothing more. In passing upon the facts, you will bear this constantly in mind."

46

Said Court erred in permitting to be rendered and in receiving the verdict herein. (Bill of Exceptions, Exception No. 47.)

And in this behalf this assignment of errors now states the grounds of this exception and of this assignment of error as follows:

1. Insufficiency of the evidence to justify said verdict:

(a) There is no evidence to support the finding that the market value of the leasehold interest of said Honolulu Plantation Company in the land involved herein is of the sum of $94,000 or any other sum in excess of $75,000.

(b) There is no evidence to support the finding that the market value of all improvements upon said land is of the sum of $8523, or any other sum.

(c) There is no evidence of the market value of said leasehold interest, or of any market value of said leasehold interest in excess of $75,000.

(d) There is no evidence of the existence upon said land of any improvements, or of the market value, if any, of any such improvements.

2. Said verdict is in opposition to, wholly inconsistent with, and not supported by the former adjudication of said Court as to the compensation of said Honolulu Plantation Company. And in this behalf this assignment of errors shows that in and by the judgment of said Court, in the above-entitled action (which said judgment is fully set out in the bill of exceptions herein) between the same parties, upon the same pleadings, and upon the same evidence, the "full Compensation" of said Honolulu Plantation Company herein "for its damages of every kind and character in this case," was formerly, to wit, on July 25th, 1902, adjudicated by said Court not to exceed the sum of $75,000.

3. Said verdict is contrary to and against the law and the evidence:

(a) Because of errors of law occurring during the trial, and excepted to by plaintiff and petitioner, said errors being included within the above and foregoing assignment of errors, numbered herein from 1 to 45, inclusive.

(b) Because said verdict was made, given and rendered by a jury.

(c) Because said verdict was made, given and rendered without sufficient evidence to support, sustain or justify it; and in this behalf this assignment of errors refers to the paragraph hereinabove marked No. 1.

4. Said verdict is not sustained or justified by either the law or the evidence, or the weight of the evidence, herein:

(a) Because of the insufficiency of the evidence to justify said verdict, as set out in paragraph numbered 1, supra.

(b) Because said verdict is in opposition to, wholly inconsistent with, and not supported by the former adjudication of said Court as to the compensation of said Honolulu Plantation Company; as more fully set out in paragraph 2, supra.

(c) Because said verdict is contrary to, and against the law and the evidence as more fully set out in paragraph 3, supra.

(d) Because said verdict was made, given and rendered by a jury.

(e) Because of the errors of law occurring during the trial and hereinabove assigned and enumerated.

5. Said verdict is excessive in this, that it attempts to award excessive, unreasonable and inconsistent compensation for damages herein, the amount thereof being without the evidence, with no evidence to support it and against the evidence, and against the former adjudication of said Court made July 25th, 1902, and hereinabove referred to.

6. Said verdict is contrary to and against the charge of the Court herein:

(a) Because said jury failed to consider all the testimony as a whole, with all its reasonable inferences.

(b) Because said jury failed to consider the market value of the land involved in its actual condition on July 6th, 1901.

(c) Because said jury considered speculative or possible value and not market value.

(d) Because said jury was neither guided nor gov-

erned by the preponderance of the evidence, or by the amount of just compensation to be awarded.

(e) Because said jury gave undue and excessive weight to the expert testimony introduced by said Honolulu Plantation Company.

47.

Said Court erred in refusing to grant a new trial herein;

(a) Because said cause was illegally tried before a jury, instead of before a Court.

(b) Because said Court, in passing upon plaintiff and petitioner's motion for a new trial of said cause, did not weigh all of the evidence, and did not exercise its discretion to say whether or not, in its opinion, said verdict was so opposed to the weight of the evidence that a new trial should be granted; and did not accord to said plaintiff and petitioner its right to have all of the evidence weighed by said Court and to have said discretion of said Court exercised in the mode and manner just herein referred to.

48.

Said Court erred in making, giving, rendering and filing its judgment herein upon and pursuant to said verdict.

Wherefore, the said The United States of America, plaintiff in error herein, prays that the judgment of the District Court of the United States for the District of

Hawaii be reversed, and that said District Court be directed to grant a new trial of said cause.

Dated, Honolulu, Hawaii, July 17th, 1902.

ROBERT W. BRECKONS,

United States Attorney in and for the District of Hawaii, and

J. J. DUNNE,

Assistant United States Attorney in and for said District,

Attorneys for said Plaintiff in Error.

[Endorsed]: Title of Court and Cause. Filed July 21, 1902. W. B. Maling, Clerk.

United States of America, }
District of Hawaii. }

In the District Court of the United States, in and for the Territory of Hawaii.

UNITED STATES OF AMERICA,

Plaintiff and Petitioner.

vs.

ESTATE OF BERNICE PAUAHI BISHOP, Deceased; and JOSEPH O. CARTER, WILLIAM F. ALLEN, WILLIAM O. SMITH, SAMUEL M. DAMON, and ALFRED W. CARTER, Trustees under the Will of Bernice Pauahi Bishop, Deceased, and of the Estate of said Bernice Pauahi Bishop, Deceased; and OAHU RAILWAY AND LAND COMPANY (a Corporation); and THE DOWSETT COMPANY, LIMITED (a Corporation); and

HONOLULU PLANTATION COMPANY (a Corporation); and CHOW AH FO; and JOHN II ESTATE, LIMITED (a Corporation); and WILLIAM G. IRWIN; and OAHU SUGAR COMPANY, LIMITED (a Corporation); and BISHOP AND COMPANY (a Copartnership),

Defendants and Respondents.

Order Allowing Writ of Error.

At a stated term, to wit, the April term, A. D. 1902, of the above-entitled Court, held at its courtroom in the city of Honolulu, in the aforesaid District of Hawaii, on the 25th day of July, A. D. 1902 Present: The Honorable MORRIS M. ESTEE, Judge of said Court above named.

Upon the petition of the plaintiff and petitioner above named, and on motion of R. W. Breckons, Esq., United States Attorney for said District, and J. J. Dunne, Esq., Assistant United States Attorney for said District, counsel for the above-named plaintiff and petitioner—

It is hereby ordered that a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, from the final judgment heretofore given, made, filed and entered by the above-named Court, in the above-entitled cause, upon the issues therein joined between said plaintiff and petitioner and the above-named Honolulu Plantation Company, a corporation, one of the above-named defendants and respondents, under date of May 31st, A. D. 1902, be, and the same is hereby, allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings herein, be forth-

with transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated, Honolulu, Hawaii, July 25th, A. D. 1902.

MORRIS M. ESTEE,
Judge of said Court.

Due service of the above order, and receipt of a copy thereof, are hereby admitted this July 26th, 1902.

HONOLULU PLANTATION COMPANY (a Corporation).
By HATCH & SILLIMAN,
Its Attorneys.

[Endorsed]: Title of Court and Cause. Order Allowing Writ of Error. Filed July 25, 1902. W. B. Maling, Clerk. By Frank L. Hatch, Deputy Clerk.

In the District Court of the United States, in and for the District of Hawaii.

THE UNITED STATES OF AMERICA,
Plaintiff and Petitioner,
vs.
THE HONOLULU PLANTATION COMPANY (a corporation), et al.,
Defendants and Respondents.

Praecipe for Transcript.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the appeal heretofore perfected

to said Court and include in said transcript the following pleadings, proceedings, and papers on file, to wit:

Petition, filed July 6, 1901.

Summons and Return, filed July, 26, 1901.

Answer Honolulu Plantation Company, filed Aug. 2, 1901.

Amended Answer Honolulu Plantation Company, filed Sept. 20, 1901.

Notice, Motion and Demand for Jury Trial, filed Sept. 20, 1901.

Amended Answer Honolulu Plantation Company, filed Oct. 9, 1901.

Decision on Motion for New Trial, filed Jan. 25, 1902.

Refusal to Accept Suggestion to Remit Portion of Verdict, filed Jan. 27, 1902.

Transcript of Testimony, filed April 26, 1902.

Instructions Requested by Plaintiff, filed March 11, 1902.

Instructions Requested by Defendant, filed March 11, 1902.

Charge to Jury, filed March 11, 1902.

Verdict, filed, March 11, 1902.

Order, filed March 12, 1902.

Notice and Motion for New Trial, filed March 20, 1902.

Stipulation, filed March 21, 1902.

Notice of Motion for New Trial, filed April 25, 1902.

Opinion on Motion for New Trial, filed May 13, 1902.

Stipulation, filed May 13, 1902.

Decree, filed May 31, 1902.

Bill of Exceptions, filed May 31, 1902.

Stipulation and Order, filed June 4, 1902.

Motion, filed June 9, 1902.

Stipulation, filed June 16, 1902.

Supplemental Bill of Exceptions, filed June 30, 1902.

Notice of Presentation, filed July 21, 1902.

Supplemental Notice of Presentation, filed July 21, 1902.

Petition for Writ of Error, filed July 21, 1902.

Assignment of Errors, filed July 21, 1902.

Order Allowing Writ of Error, filed July 25, 1902.

Minute Entries from March 3, 1902 to May 15, 1902.

Citation on Appeal (Original), filed July 26, 1902.

Writ of Error (Original), filed July 26, 1902.

This Praecipe

Said transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the clerk of the said Circuit Court of Appeals at San Francisco, before August 23d, A. D. 1902.

ROBT. W. BRECKONS,
J. J. DUNNE,
Attorneys for the United States.

[Endorsed]: Filed July 28th, 1902. W. B. Maling, Clerk.

In the District Court of the United States, in and for the Territory and District of Hawaii.

Clerk's Certificate to Transcript.

United States of America, }
Territory of Hawaii. } ss.

I, Walter B. Maling, clerk of the District Court of the United States for the Territory of Hawaii, do hereby certify the foregoing —— pages, numbered from 1 to 827, inclusive, and comprised in the preceding two volumes, numbered volumes 1 and 2, respectively, to be a true copy of the record, opinions of the Court, bill of exceptions, assignment of errors, praecipe for transcript and all proceedings in the above-entitled case, as the same appear in my office, and that the same together constitute the return to annexed writ of error herein on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that I hereto annex and herewith transmit the original citation on appeal and writ of error, in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 12th day of September, A. D. 1902.

[Seal.] W. B. MALING,

Clerk.

United States of America,
District of Hawaii. }

In the District Court of the United States, in and for the District of Hawaii.

THE UNITED STATES OF AMERICA,

Plaintiff and Petitioner,

vs.

ESTATE OF BERNICE PAUAHI BISHOP, Deceased; and JOSEPH O. CARTER, WILLIAM F. ALLEN, WILLIAM O. SMITH, SAMUEL M. DAMON and ALFRED W. CARTER, Trustees Under the Will of Bernice Pauahi Bishop, Deceased; and of the Estate of said Bernice Pauahi Bishop, Deceased; and OAHU RAILWAY AND LAND COMPANY (a Corporation); and THE DOWSETT COMPANY, LIMITED (a Corporation); and HONOLULU SUGAR COMPANY (a Corporation); and HONOLULU PLANTATION COMPANY (a Corporation; and CHOW AH FO; and JOHN II ESTATE, LIMITED (a Corporation); and WILLIAM G. IRWIN; and OAHU SUGAR COMPANY, LIMITED (a Corporation); and BISHOP AND COMPANY (a Copartnership),

Defendants and Respondents.

Citation.

United States of America.—ss.

The President of the United States, to Honolulu Plantation Company, a Corporation; and to Hatch & Silliman, Its Attorneys, Greeting:

You, and each of you, are hereby cited and admon-

ished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, within thirty (30) days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the above-named District Court of the United States in and for the Territory and District of Hawaii, wherein The United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the final judgment in said writ of error mentioned, and from which said writ of error has been allowed, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States of America, this 26th day of July, A. D. 1902, and of the Independence of the United States the one hundred and twenty-sixth.

MORRIS M. ESTEE,

United States District Judge, Presiding in the Above-entitled Court.

[Seal. Attest. W. B. MALING,

Clerk of the Above-entitled Court.

United States of America,
Territory and District of Hawaii. }

I hereby certify that I served the foregoing citation on the 26th day of July, A. D. 1902, in the city of Honolulu, in said District, on William G. Irwin, then and there the resident manager, and known to me to be the resident manager of said Honolulu Plantation Company, said corporation, and said defendant in error

herein, by then and there personally delivering to and leaving with said William G. Irwin, a true copy of said citation; and I further testify that on the 26th day of July, A. D. 1902, in said city of Honolulu in said District, I served the foregoing citation on Messrs. Hatch & Silliman, then and there the counsel for said Honolulu Plantation Company, said defendant in error herein, by then and there personally delivering to and leaving with said attorneys, personally, a true copy of said citation, said Hatch & Silliman being then and there known to me to be the attorneys of and for said defendant in error herein.

MARSHAL'S FEES.

Service 2 citations, $2.00 each,.................	$4.00
Mileage, 2 miles, $.06 each,.....................	.12
	$4.12

Dated, Honolulu, Hawaii, July 26th, A. D. 1902.

[Seal.] E. R. HENDRY,

United States Marshal in and for said District.

[Endorsed]: United States District Court, District of Hawaii. The United States of America, Plaintiff and Petitioner, vs. Honolulu Plantation Company, a Corporation, et al., Defendants and Respondents. Citation. Filed July 26, 1902. W. B. Maling Clerk.

United States of America,
District of Hawaii. }

In the District Court of the United States, in and for the District of Hawaii.

THE UNITED STATES OF AMERICA,

Plaintiff and Petitioner,

vs.

ESTATE OF BERNICE PAUAHI BISHOP, Deceased; and JOSEPH O. CARTER, WILLIAM F. ALLEN, WILLIAM O. SMITH, SAMUEL M. DAMON and AIFRED W. CARTER, Trustees Under the Will of Bernice Pauahi Bishop, Deceased, and of the Estate of said Bernice Pauahi Bishop, Deceased; and OAHU RAILWAY AND LAND COMPANY (a Corporation); and THE DOWSETT COMPANY, LIMITED (a Corporation); and HONOLULU SUGAR COMPANY (a Corporation); and HONOLULU PLANTATION COMPANY (a Corporation); and CHOW AH FO; and JOHN II ESTATE, LIMITED (a Corporation); and WILLIAM G. IRWIN; and OAHU SUGAR COMPANY, LIMITED, (a Corporation); and BISHOP AND COMPANY (aCopartnership),

Defendants and Respondents.

Writ of Error.

United States of America,—ss.

The President of the United States of America, to the Honorable MORRIS M. ESTEE, Judge of the United States District Court, for the Territory of Hawaii, Greeting:

Because in the record and proceedings, as also in the giving, making, rendition, entering and filing of the final judgment in that certain cause in the aforesaid District Court, before you, between The United States of America, plaintiff and petitioner, and Honolulu Plantation Company, a Corporation, defendant and respondent, and one of the defendants and respondents above named, a manifest error hath happened, to the great prejudice and damage of said plaintiff and petitioner, The United States of America, as is said and appears by the petition herein.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid, in this behalf do command you, if justice be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, together with this writ, so as to have the same at the said place in the said Circuit on the 23d day of August, A. D. 1902, that the said records and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 26th day of July, A. D. 1902. Attest my hand and the seal of the United States District Court for the Ter-

ritory of Hawaii, at the clerk's office at Honolulu in said territory, on the day and year last above written.

[Seal] W. B. MALING,

Clerk of the United States District Court for the Territory of Hawaii.

Allowed, this July 26th, A. D. 1902.

MORRIS M. ESTEE,

Judge of the United States District Court for the Territory of Hawaii.

Service of the above writ, and receipt of a copy thereof, are hereby admitted this 26th day of July, A. D. 1902.

HONOLULU PLANTATION COMPANY (a Corporation),

By HATCH & SILLIMAN,

Its Counsel.

[Endorsed]: United States District Court, District of Hawaii. The United States of America, Plaintiff and Petitioner, vs. Honolulu Plantation Company (a Corporation et al., Defendants and Respondents. Writ. Filed July 26th, 1902. W. B. Maling, Clerk.

[Endorsed]: No. 896. In the United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Plaintiff in Error, vs. The Honolulu Plantation Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court, for the District of Hawaii.

Filed September 19, 1902.

FRANK D. MONCKTON,

Clerk.

By Meredith Sawyer,

Deputy Clerk.